THIRD WORLD
RESURGENCE

ISSUE No. 275 KDN PP6738/01/2013 (031741) www.twn.my

The TPPA
A threat to national sovereignty and development

ISSN 0128-357X
9 770128 357003

Editor's Note

ONE of the major problems developing countries have had to face in dealing with the US is the oscillation of its policy on the proper fora for negotiating trade deals. While it has long pontificated on the importance of multilateralism in trade negotiations, it has also made it clear that it is always prepared to turn to bilateral and regional agreements when it is unable to have its way at the World Trade Organisation (WTO).

When WTO talks in Cancun in 2003 collapsed after the developing countries stood up against attempts by rich countries to railroad their agenda, an embittered US Trade Representative Robert Zoellick warned that the US would not allow the way forward to be blocked by a group of 'won't do' countries.

The 'way forward' predictably turned out to be the bilateral and regional option, and since then the US has embarked on a significant number of such agreements. Among the regional agreements, it is the Trans-Pacific Partnership Agreement (TPPA) to which the US attaches prime importance as it encompasses a region that is not only one of the world's fastest-growing economically but also one which is of strategic importance in the US policy drive to contain China.

To date, 11 other countries – New Zealand, Chile, Singapore, Brunei, Australia, Peru, Vietnam, Malaysia, Canada, Mexico and Japan (the most recent member, which joined in July) – have joined the US in negotiating the proposed free trade pact.

The 29 chapters of the proposed treaty go well beyond trade issues. To date, some 19 rounds of negotiations have been held, the latest in Brunei in August. This followed closely on the heels of a round in Kota Kinabalu, Malaysia, in July.

The negotiations may well be protracted but the fact is that the public have been kept in the dark about the contents of the proposed agreement. While even lawmakers in the countries involved are denied access to the draft text of the agreement, some 600 corporate 'advisers' to the US delegation enjoy full access to it!

From leaked texts of some chapters, it is not difficult to see the overwhelming impact of these corporate interests in the shaping of this (to use the words of US President Barack Obama) '21st century agreement'. It would appear that almost every chapter in the agreement is a requisition for more market openings to facilitate the entry of foreign private capital with reduced policy and regulatory space for host governments.

Thus, with regard to market access for goods and services, the US is pushing for a high degree of liberalisation to enable its exporters to penetrate the markets of signatory countries. The fact that such wide-ranging liberalisation may impact adversely on local industries in these countries and result in large-scale unemployment is of no concern to the US.

The draft investment chapter of the TPPA seeks to compel host countries to liberalise their investment regulations so that US companies and investors can freely enter and invest in these countries, acquire assets, and move their capital and profits without hindrance. Compliance with such provisions will require developing countries to jettison their national development policies which seek to maintain a balance between local and foreign capital. The requirement to limit or even remove restrictions on the free flow of foreign capital (especially financial capital) can open up an economy to financial speculation, with disastrous consequences as the Asian crisis demonstrated in the 1990s.

Under the TPPA, foreign investors can not only have recourse to the normal legal remedies afforded by the host country to protect their interests. The investor-state dispute system proposed by the treaty seeks to empower them to sue governments where their profits (real and potential) are hurt by any government measure, however justified the measure may be on public interest grounds. This 'exorbitant privilege' epitomises the fact that, in the final analysis, the TPPA is a corporate charter.

State-owned enterprises (SOEs) are viewed by US corporations as impediments to their access into the markets of host states because they often enjoy preferential purchasing arrangements, government subsidies and differential tax treatment. A chapter in the TPPA on SOEs aims to eliminate these mechanisms so that Western corporations will be better positioned to grab a share of their market.

Meanwhile the government procurement chapter seeks to further whittle away the role of the state in economic development. Government procurement is an important mechanism in many developing countries for promoting local small businesses, especially those owned by economically disadvantaged communities. By requiring the opening up of this sector to foreign competition, the TPPA would weaken the state's role in orienting development towards socially desirable goals.

Finally, the TPPA would impose on member states inordinately high standards of protection for holders of intellectual property – higher than those imposed by the WTO agreements. The main beneficiaries of such high protection will be Western corporations which are the main holders of such rights. The adverse effects of such strict standards of intellectual property protection will be acutely felt in the field of health care, among others. Stringent patent protection will severely limit the manufacture of generic versions of patented medicines and thereby deny consumers access to cheap medicines.

For all these reasons, it would be an act of folly for any developing country to sign on to such a pact. Rather than engage in the thankless task of trying to redesign the treaty, it is time to walk away from it.

Our cover story focuses on the TPPA and provides analyses of some of its key provisions. In highlighting its risks, we publish the views of a former TPPA negotiator from a Latin American country on some of its dangerous implications. Finally, to place the issue in a larger context, we also carry a background to its evolution and the geopolitics behind it.

– The Editors

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Third World
RESURGENCE
www.twn.my
No 275 July 13 ISSN 0128-357X

The Trans-Pacific Partnership Agreement (TPPA) currently being negotiated among 12 Pacific Rim economies would unduly advance corporate interests at the expense of member states' policymaking autonomy. Picture shows an anti-TPPA protest in Kuala Lumpur. 4

THIRD WORLD RESURGENCE is published by the Third World Network, an international network of groups and individuals involved in efforts to bring about a greater articulation of the needs and rights of peoples in the Third World; a fair distribution of world resources; and forms of development which are ecologically sustainable and fulfil human needs.

THIRD WORLD RESURGENCE is published monthly by Third World Network, 131 Jalan Macalister, 10400 Penang, Malaysia. Tel: 60-4-2266728 Fax: 60-4-2264505. Email: twnet@po.jaring.my
Printed by Jutaprint, No. 2, Solok Sungai Pinang 3, 11600 Penang, Malaysia.
Cover Design: Lim Jee Yuan

The Sen-Bhagwati 'debate' on economic policy in India

The recent debate on public policy in India between two well-known economists was timely, taking place as it did at a time when the Indian economy has slowed sharply. But *Jayati Ghosh*'s analysis of the debate reveals that the issues raised have a relevance beyond the sub-continent.

A MAJOR feature of the discussion on public policy in India in recent times is the recent debate between Professor Amartya Sen and Professor Jagdish Bhagwati, two eminent non-resident Indian economists who have both had strong links with Indian policymakers over the past decades. Sen has been arguing that there are huge deficits in terms of basic developmental goals, particularly in nutrition, poverty and education, and that these need to be addressed immediately. The other side, led by Bhagwati, argues that generating output growth is the most important goal and this will allow the other things to be delivered.

Several things are quite remarkable about this debate.

The first surprise is that such a debate could become a major news item at all, making headlines and filling screen time on Indian news channels, when it is about economic strategies that are normally discussed only in relatively small academic and policy circles. In this case, the media has tended to make it into a gladiator fight between two celebrity economists, and in the process reduced both arguments to relatively simplistic positions. It has also been interpreted by some as a proxy war between Sonia Gandhi and the Congress Party, on the one hand (with their declared devotion to public spending even though it has not always been reflected in actual practice), and the wannabe Prime Minister Narendra Modi of the Bharatiya Janata Party (BJP), who constantly trumpets his emphasis on corporate sector-led 'growth', on the other.

The second surprise is the low level of the attacks on Professor Sen.

The recent debate between the two eminent non-resident Indian economists Professor Amartya Sen *(left)* and Professor Jagdish Bhagwati *(right)* has made the headlines in India.

This has not been a 'debate' as such so much as a one-sided attack from what could be called the Bhagwati 'camp', as it were, while Professor Sen has maintained his dignity and avoided the personal in the discussions. It is not just the sad sight of someone of the stature and seniority of Professor Bhagwati stooping to such aggressive, bilious and even undignified attacks on his sometime colleague. Partly as a result of that, all sorts of people, including economically illiterate journalists and politicians who are nonetheless used to propounding on the economy, feel that they can now take potshots at the Nobel laureate for their consequent two seconds of fame. These critiques have ranged from personally vicious to arguments that verge on the macabre.

The third surprise is how the debate has been reduced to a simplistic and even banal set of alternatives, between so-called 'economic growth' on the one hand and social spending on health, nutrition and education on the other. Obviously, it cannot be and is not either gentleman's case that only one of these matters, so it is trivial to reduce the discussion to this. It is true that Professor Sen is much more concerned about the distribution of that growth and particularly how it affects the material and social conditions of the majority of the population rather than a favoured few. And he is therefore completely correct to point out that the past three decades of relatively high growth have shortchanged a significant bulk of the Indian population, because of insufficient provision of basic infrastructure like electricity to every household and all-weather roads to every village; complete mismanagement of the food system so that food insecurity and undernutrition remain rampant; and very inadequate public spending on health and education.

The critical point that really matters, but has been excluded in a lot of the media coverage, is how exactly that growth is to be achieved and what the pattern of that growth should be. This is where much of the current discussion seems to miss the point. The Bhagwati model is one of continued and sustained 'liberalisation' of the rules for large capital – and implicitly, continued subsidisation of its activities through the provision of cheap land, access to mineral resources and so on.

So 'more reforms' – in the form of more concessions to large capital, more deregulation of markets and reduced protection for labour – are seen by Professor Bhagwati and his followers as the answer to the current slowdown as well as the recipe for future economic expansion. The three he has identified in particular are retail sector liberalisation, further trade liberalisation and labour market reforms, all of which are incidentally likely to be associated with worsening employment conditions and further reduced bargaining power for workers. His flag-bearers (such as another non-resident economist Arvind Panagariya, who holds the 'Bhagwati Chair' at Columbia University) have gone even further, suggesting that India has actually performed quite well on many of these indicators, and even suggesting that global nutrition standards of the World Health Organisation (WHO) and Food and Agriculture Organisation (FAO) should not be applied to Indians, presumably because of their different genetic make-up!

Professor Sen has been arguing that there are huge deficits in terms of basic developmental goals, particularly in nutrition, poverty and education, which need to be addressed immediately in India.

But it really should be evident now that this particular economic model has run its course, and is coming up against all kinds of constraints that are simultaneously economic, ecological and socio-political. Open trade and capital accounts have generated large (and ultimately unsustainable) current account deficits that are being financed for now by highly mobile movements of short-term capital. The lack of sufficient compensation and rehabilitation measures for those displaced by development projects and urbanisation is not only unjust, it has dented official credibility and created unrest. The privatisation and barefaced extraction of mineral, land and water resources that rightly belong to the people has led to over-exploitation and unsustainable patterns of use and given rise to a seemingly endless season of scams. The lack of good-quality employment generation has meant that formal employment has barely increased through three decades of high growth, and is part of the reason why inequalities have increased so much. This is now emerging as a socio-political problem of massive proportions.

This is the macroeconomic context within which the issues that Professor Sen has highlighted must be viewed. The completely inadequate quantity and very uneven quality of public provision of nutrition, health and education services is obviously because of inadequate public spending even when aggregate incomes were growing rapidly. But the question must be asked: why was such public spending still relatively low despite the scale of the problem? Lack of sufficient political will is one obvious answer, and it is one that Professor Sen is right to stress, so as to demand change in this area. But this is not the only reason. A more fundamental reason may lie in the very pattern of growth itself.

The focus of the Indian state has been on generating growth through various incentives designed to encourage the expansion of private capital. It is now obvious that this can very quickly become prey to corruption, crony capitalism and the like. It also means that the state cannot tax either large capital or the richer groups in ways that can generate public resources for essential public spending. And this strategy in itself generates incentives for private players that effectively militate against a more broad-based and egalitarian economic expansion.

Capitalist accumulation in India has been based essentially on extraction: of land and other natural resources, of the labour of workers, of the products of peasant cultivators and small producers of goods and services. This has reduced the incentives to focus on productivity growth and innovation as routes to more rapid growth, since state-aided primitive accumulation and socially determined extra-economic relationships provide easier and more reliable means of generating private surpluses. All this has actually been reinforced under globalisation, rather than being diminished by external competition.

But the limits of this approach are now clearly being reached. Domestic business has got used to an environment that delivers constantly increasing incentives, and has shown that it will simply vote with its feet – pack up and invest elsewhere – if more and more incentives are not provided. But providing these incentives has effectively bankrupted the state (tax concessions to corporations every year come to many multiples of all the spending on 'flagship schemes' by the Finance Ministry's own reckoning) and rendered it less able either to provide more incentives or to undertake the necessary public investments on its own.

So simply relying on more of the same is not going to work, and clearly a new growth strategy that is more directly concerned with encouraging productive employment generation and better conditions of the bulk of the population is required. So it is not about 'growth versus social sector spending' at all – it's about the growth strategy, stupid. ◆

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And then there were twelve

The origins and evolution of the TPPA

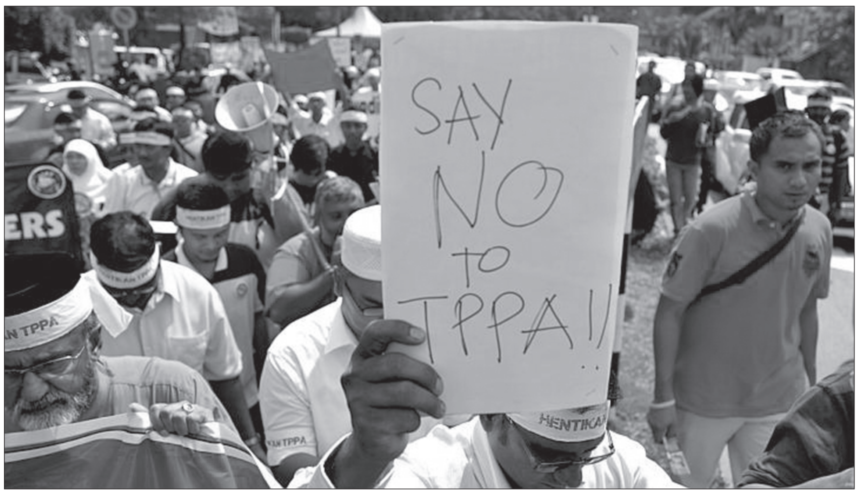
The agreement being negotiated by the US-led 12-nation regional trade bloc known as the Trans-Pacific Partnership (TPP) has engendered much controversy. Its origins can be traced to a little-known four-party free trade agreement concluded in 2005 by New Zealand, Chile, Singapore and Brunei. It was US participation and its subsequent hegemonic role in the later negotiations of this group (collectively known as the Pacific Four or P-4) that resulted not only in an expansion of its membership but also in the setting of an agenda for what critics charge is a 'corporate charter'.

T Rajamoorthy

THE free trade agreement being negotiated by the regional bloc known as the Trans-Pacific Partnership (TPP) has provoked widespread opposition in the countries involved in its negotiation. Today the Trans-Pacific Partnership Agreement (TPPA) is rightly perceived and condemned as a US-led attempt to penetrate and dominate the economies of the region.

And yet in its origins, it was not a US-conceived treaty and initially the US was not even a party to it. When negotiations on the agreement (known originally as the Trans-Pacific Strategic Economic Partnership) were launched on the sidelines of the summit of the Asia-Pacific Economic Cooperation (APEC) forum in 2002, it was a tripartite affair involving New Zealand, Chile and Singapore. Dubbed the Pacific Three (P-3), they would soon become the Pacific Four (P-4) when Brunei joined the negotiations in 2005. The negotiations were concluded later that year and the agreement came into force in 2006 even though the negotiations on the financial services and investment chapters of the agreement were deferred for two years.

It was only in February 2008, when President Bush announced that the US would join the deferred P-4 negotiations on financial services and investment, that the US came into the picture.



The Trans-Pacific Partnership Agreement has provoked widespread opposition in the countries involved in its negotiation. Picture shows an anti-TPPA demonstration in Kuala Lumpur.

One key reason for the US's interest in the trade talks is to be found in the US President's 2008 Annual Report on the Trade Agreements Programme. It says, in part, 'US participation in the TPP could position US businesses better to compete in the Asia-Pacific region, which is seeing the proliferation of preferential trade agreements among US competitors and the development of several competing regional economic integration initiatives that exclude the United States.'[1] Apart from economic considerations, there are also geopolitical concerns, particularly with regard to the growing power and influence of China, something which became clearer with the Obama administration's policy announcement of a military and diplomatic 'pivot' or 'rebalance' towards Asia. As a research paper for the US Congress notes:

'The TPP could have implications beyond US economic interests in the Asia-Pacific. The region has become increasingly viewed as of vital strategic importance to the United States. Throughout the post-World War II period, the region has served as an anchor of US strategic relationships, first in the containment of communism and more recently as a counterweight to the rise of China.'[2]

As noted above, US involvement began in March 2008 with its participation in the P-4 negotiations on financial services and investment. Later in September it announced its decision to participate in comprehensive negotiations for an expanded trans-Pacific agreement and thereafter took charge of the whole negotiations. It took the initiative to expand the membership of the proposed treaty by coupling its announcement of accession with an invitation to Australia, Peru and Vietnam to join the pact.

For Chile and Peru, two Latin American countries which had previously already concluded bilateral free trade agreements (FTAs) with the US, the leading role of the US in the negotiations for an expanded trans-Pacific agreement raised some legitimate fears. Soon after President Bush announced in 2008 his country's intention to join the negotiations, one Chilean trade official complained that, with an FTA with the US already in place, 'he could only expect greater, politically and perhaps economically difficult, demands from the Americans in a TPP'.[3] This fear among Latin American countries which had already concluded FTAs with the US, that they might end up 'paying twice', was spelled out more fully by a Chilean economist:

'Chile and Peru, as well as other Latin American potential TPP candidates, had to make several economically and politically costly concessions in their respective FTAs with the US. Some of those concessions were made even after the formal closure of negotiations, through amendments to the agreed texts. Commitments on intellectual property have been especially contentious, as they often involved going beyond TRIPS provisions. Such is the case, for example, of the increased protection afforded by FTAs to pharmaceutical and agrochemical products, as well as copyrighted matter; of the restrictions placed on certain flexibilities allowed by TRIPS such as mandatory licensing for medicines; and of the strengthening of enforcement provisions beyond TRIPS disciplines … Renegotiation within the TPP of existing commitments on issues such as IPRs [intellectual property rights], investment and environment involves for Latin American countries the risk of "paying twice" in areas of great political sensitivity and which relate to a broad range of public policies.'[4]

Malaysia, which was invited in 2010 to join the proposed pact, had been involved in negotiations for a bilateral FTA with the US. The talks however had become stalled because of disagreements on some issues. Interestingly, in explaining why an invitation had been extended to a country with which bilateral talks had proved abortive, the then United States Trade Representative (USTR) Ron Kirk, in his written notification to the US Congress of the President's decision, claimed that 'Malaysia, which is engaged in extensive domestic economic reform, has assured us that it is now prepared to conclude a high-standard agreement, including on these issues [which remained outstanding in the bilateral negotiations]'.[5] If the claim is true, then the TPPA will afford the US a second opportunity to wrest from Malaysia what it could not secure in bilateral negotiations.

With Malaysia as its ninth member, a formal announcement of the emergence of this trading bloc (now known as the TPP with the dropping of the words 'strategic' and 'economic') was made by the parties at the APEC leaders' meeting in Honolulu in 2011. In the same year, the US's partners in the North American Free Trade Agreement (NAFTA), Canada and Mexico, indicated their intention to join the grouping and they made their debut at the 15th round of the TPPA negotiations in Auckland in December 2012.

The emergence of the Trans-Pacific Partnership trading bloc was formally announced at the APEC leaders' meeting in Honolulu in 2011.

South Korea had been invited to join the grouping in 2010 but rather prudently declined. But it is the decision to invite its economic rival Japan and the decision of that country to become the latest, 12th member (it participated in the 18th round of TPPA talks in Kota Kinabalu, Malaysia, in July) that is somewhat perplexing. As Wilson Center Senior Policy Scholar William Krist observed in his 2012 paper on the TPPA prepared for the Center, 'there is some strong opposition to Japan's participation within the United States; for example, the US auto industry opposes Japan's participation in the negotiations at this time, arguing that Japan's market access barriers cannot be remedied in a free trade agreement'.[6] There was equally strong opposition within Japan from the country's small but influential agricultural lobby to joining the TPP.

While geopolitical considerations have been an important factor in overriding opposition in both countries, the Obama administration obviously believes that it can still wrest significant concessions from Japan on the automobile issue through the TPPA. US trade officials have already begun talks with their Japanese counterparts on this issue and, at the time of writing, the new USTR Michael Froman is scheduled to hold further talks on 19 August during a one-day stopover in Tokyo on his way to Brunei for the 19th round of TPPA negotiations.[7]

From the P-4 to the TPPA: The great transformation

As noted above, soon after the US became a party to the P-4 negotiations, it announced its decision to participate in comprehensive negotiations for an expanded trans-Pacific agreement. For the original P-4 parties and the other new participants, it must soon have become evident that the US drive to transform the P-4 agreement into the TPPA was going to be a costly exercise involving stringent commitments and concessions from the other countries.

Taking the P-4 agreement as a point of departure for the TPPA negotiations, the chasm between the P-4 agreement and the TPPA is huge. While clearly designed to give greater impetus to the process of economic liberalisation and while it does make inroads in opening up more space for market forces to operate, the P-4 agreement is nevertheless hedged with provisions conferring on member governments discretionary powers to safeguard national priorities (see box for an analysis of the P-4 agreement). It is evident even from the preamble of the agreement that the intention of the parties is to preserve and protect the right to regulate the liberalisation process. The preamble, which informs all the 20 chapters of the agreement, explicitly recognises:

(1) 'the rights of [the four] governments to regulate in order to meet national policy objectives'; and

(2) 'their flexibility to safeguard the public welfare'.[8]

What this means is that, however liberally the agreement is interpreted as furthering the process of economic liberalisation, it cannot be construed as sanctioning the undermining of the right of the governments to safeguard national policy objectives and public welfare. This clearly sets a limit on the liberalisation drive and preserves the role of the state in national development and in protecting public welfare.

No such constraint appears to inform the drive by the US to mould the P-4 agreement into (in the words of Obama) 'a 21st century trade agreement'. To ensure that the liberalisation process is pushed to its limits, the US has pressed for the adoption of a 'negative list' approach in the negotiations for the TPPA. The point is that a negative list approach has an inherent bias in favour of liberalisation as it requires parties to specify the sectors that will not be covered by commitments. All those sectors not so specified are deemed to have been

The P-4 agreement

THE main object of the P-4 agreement was to eliminate all tariffs between the parties by 2015. The 20 chapters of the agreement not only deal with trade in goods and services but cover many of the staple issues of contemporary free trade agreements including intellectual property protection, competition policy, government procurement, sanitary and phytosanitary measures, trade remedies and dispute settlement. The agreement is accompanied by two memoranda of understanding on environment and labour cooperation.

There is no doubt that in some of its provisions, the P-4 agreement commits parties to obligations beyond those required under the current World Trade Organisation (WTO) agreements. Thus, with regard to government procurement, the parties are obliged to afford foreign nationals the right to enter the domestic market and grant them the same treatment as locals. Under the provisions, a party cannot discriminate in favour of locals. It must be noted that attempts by the rich countries to incorporate similar provisions into a multilateral WTO agreement on government procurement were rejected by the developing countries. Although the issue of government procurement was introduced into the WTO agenda at the 1996 WTO ministerial meeting in Singapore (hence it is known as one of the 'Singapore issues'), attempts to make it the subject of a multilateral WTO agreement binding on all member states have hitherto been stymied by stiff resistance from the developing countries. As a result, the WTO agreement on government procurement is only a plurilateral accord to which parties can voluntarily choose to adhere.

Another 'Singapore issue' rejected as the subject of a multilateral WTO agreement but which the P-4 agreement incorporates is competition policy. However, the P-4 commitments are a far cry from those previously envisaged by developed-country proponents of a WTO agreement on competition policy. The idea of the proponents in the WTO was to embody a competition policy framework in a WTO agreement which would, in the words of a European Union paper, provide 'effective equality of opportunity of competition' in the local market for foreign firms. Countries which breached the policy could be hauled up before the WTO's dispute settlement system. In contrast, the P-4 agreement only requires each party to set up a national competition authority to 'proscribe anti-competitive business conduct'. While parties are obliged to adopt competition laws which 'shall apply to all commercial activities', there is express recognition of the right of each state to 'exempt specific measures or sectors from the application of their general competition law'. The only condition is that any such exemption must be 'transparent and undertaken on the grounds of public policy or public interest'. Clearly, this provision provides the flexibility which a country needs to devise its own appropriate model of competition law and policy.

The same competition policy chapter attempts to broach the sensisubjected to market opening.

Although the TPPA negotiations are completely shrouded in secrecy, it would appear from leaked drafts that one of the agreement's key objectives is to undermine the role of the state in national development. One of the main targets is the state-owned enterprise (SOE). The pressure for this move comes from US Big Business. '[T]here is strong pressure from the American business community to tackle what it perceives as discriminatory state capitalism through the TPP talks. In April 2011, six industry associations sent a letter to USTR Kirk requesting binding obligations on SOEs that would curb unfair advantages vis-a-vis private companies.'[9] This push to 'level the playing field' for foreign capital can have serious repercussions for many developing countries in which SOEs play an important role in their development. For example, Vietnam has some 1,000 SOEs and restructuring them to conform to free-market rules can have a major impact on the country's economy.[10]

Another provision which seeks to whittle away the role of the state in economic development is the TPPA's procurement chapter. Government procurement contracts have been useful tools for states to promote local businesses and domestic industrial development. They have also been used to assist disadvantaged and economically weaker communities. The TPPA's procurement chapter would however weaken the state's capacity to play such a role as it would require all firms operating in any signatory country to be provided equal access as domestic firms to government procurement contracts over a certain threshold.

Another issue of grave concern is the high standards of protection that would be afforded by the TPPA to holders of intellectual property – copyright, patents, trademarks etc. – obliging signatory states to amend their laws to grant a virtual monopoly to such holders. They go well beyond the level of the commitments in the World Trade Organisation (WTO)'s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and pose a serious threat to access to medicines. Here again the hand of Big Business is evident; Big Pharma views the TPPA as an important vehicle to impose stringent rules to limit the production of cheap generic medicines.

But the intellectual property provisions under the TPPA will affect not only medical patients but also citizens at large. For example, the TPPA seeks to extend the duration of copyright beyond the current 50 years after the death of the author. If the US has its way, the duration may be extended up to 120 years after the author's death. This will impact adversely not only on library digitisation programmes but also ultimately on people's access to knowledge.

Leaked drafts of the investment chapter of the TPPA reveal that the US financial industry has also had a hand in shaping its contents. The chapter sanctions the liberalisation of financial inflows and outflows, and places severe restrictions upon the ability of TPPA member governments to restrict or curb such flows by the use of capital controls. The dangers of the unfettered flow of speculative capital were painfully illustrated in the 1990s during the Asian financial crisis and the object lesson it provided helped to persuade even the International Monetary Fund (IMF), long a strident advocate of the free flow of capital, to give a qualified approval for the use of capital controls. The investment chapter of the TPPA is thus not only a threat to the financial stability of signatory nations, but a retrograde attempt to embellish failed neoliberal dogma in an international agreement.

Lastly, the TPPA's dispute settlement chapter contains a highly con-

tive issue of 'public enterprises and enterprises entrusted with special and exclusive rights, including designated monopolies'. While the parties are required to ensure that 'such enterprises shall be subject to the rules of competition' and 'no measure is adopted or maintained that distorts trade in goods or services', this is subject to the overriding and unchallengeable power of governments to designate or maintain 'public or private monopolies according to their respective laws'. Not only does this proviso make it clear that this power is unfettered; a further proviso in the same chapter puts any such decision beyond judicial challenge by imposing a blanket prohibition on 'recourse to any dispute settlement procedures … for any issue arising from or relating to this Chapter'. Clearly this chapter does not undermine the role of public enterprises and public monopolies in economic development.

On some key issues such as intellectual property, there is little that is controversial about the P-4 agreement. While it recognises the importance of providing intellectual property protection, it specifically affirms 'the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter'. The parties merely affirm their commitment to the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and 'any other multilateral agreement relating to intellectual property to which they are a party'. Significantly, the P-4 agreement specifically recognises the right of parties 'to establish appropriate measures to protect traditional knowledge'.

On the resolution of disputes which may arise under the agreement, the arbitral tribunal (comprised of three arbitrators, one appointed by each side and the third to be mutually agreed) is designated as the general forum for resolution of such disputes. However, the agreement also recognises the right of countries to have recourse to dispute settlement under any other agreement to which both disputing countries are parties (including the WTO agreements). While this affords a measure of 'forum shopping', there is no provision (as there is in the TPPA) for investors to sue states. ◆

TPPA negotiators at a press conference after the conclusion of the 18th round of talks in Kota Kinabalu in July. 'The time has come for greater public participation so as to ensure that the people have a voice in determining the outcome of the TPPA negotiations.'

troversial provision (dubbed 'investor-state dispute settlement' or ISDS) which empowers a foreign investor (either a corporation or an individual) to bring a claim directly against the host state for losses allegedly suffered. One particular cause of action which investors have invoked under the ISDS provision in some existing free trade agreements is 'expropriation'. The elastic definition of the term in such treaties has enabled investors to haul up governments before an international arbitration tribunal for any move (e.g., a new regulation or policy fully justified in the interests of public health or other social concerns) which may be seen to deprive them of expected future profits. The usual fora for such adjudication are the tribunals conducted by the International Centre for Settlement of Investment Disputes (ICSID), an integral part of a 'self-serving' international arbitration industry which, as a damning international report has exposed, 'has a vested interest in perpetuating an investment regime that prioritises the rights of investors at the expense of democratically elected national governments and sovereign states'.[11]

While some countries such as Australia and Vietnam are strongly opposed to the inclusion of an ISDS clause in the TPPA, the US appears adamant on incorporating such a clause. To buttress its case, it has argued that the US Congress will not ratify the TPPA unless it includes an ISDS clause.[12]

In light of the many pitfalls that confront any developing country that is a party to the TPPA talks, the issue is not whether it can successfully negotiate these dangers. The real question is why any developing country should choose to become locked in negotiations which hold out so many risks and perils. In any case, it is apparent that the issues involved are too weighty to be left only to policymakers and political leaders to decide. The time has come for greater public participation so as to ensure that the people have a voice in determining the outcome of the TPPA negotiations. A first and essential step must therefore be an end to the secrecy surrounding the talks. ◆

T Rajamoorthy, a member of the Malaysian Bar, is Editor of Third World Resurgence.

Endnotes

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COVER

The elephant in the room: The geopolitics of the TPPA

In criticising the leaders of her native New Zealand for their myopia in treating the TPPA as a depoliticised international agreement, *Jane Kelsey* argues that China is the ultimate target of every major US proposal in this 'new-generation, twenty-first-century agreement.'

Jeremy Malcolm

A protest against the TPPA during the 15th round of TPPA negotiations in Auckland in December 2012. 'The strategic and foreign policy dimension of the TPPA has especially serious implications for a country like New Zealand which wants to remain best friends' with both the US and China.

THE term 'competitive imperialism' applies where 'free trade is subservient to the goal of projecting influence to another country or throughout a region, and checking actual or perceived reciprocal efforts by another power'. Last decade, it was used to describe the contest between the US and the European Union (EU) as they competed to secure new-generation free trade agreements (FTAs) for strategic reasons. Today, 'competitive imperialism' is more appropriately used to describe the growing desperation of the US to neutralise the ascent of the 'BRICS' – Brazil, Russia, India, China and South Africa. China is preeminent among them, to the point that, even though it is not a party to the proposed Trans-Pacific Partnership Agreement (TPPA), it is the elephant that is constantly in the room and the ultimate target of the US's most aggressive proposals.

The strategic and foreign policy dimension of the TPPA has especially serious implications for a country like New Zealand which wants to remain best friends with both sides. On the one hand, Trade Minister Tim Groser warned in February 2012 that New Zealand would pull out of the negotiations if politicians in the United States used them as a vehicle to try to contain the rise of China. Senior government representatives from New Zealand and Australia are believed to have been very uncomfortable with some of Washington's anti-China rhetoric. As detailed below, that rhetoric continues unabated, but predictably Groser has not walked away.

At other times, political leaders and journalists resort to that happy place where New Zealand can claim neutrality as an independent small power and play on both teams. In late 2012 Prime Minister John Key welcomed the talks for a mega-deal involving China and the Association of South-East Asian Nations (ASEAN), 'but TPP is the big game for us at the moment'.

New Zealand's approach is to treat the TPPA as a depoliticised international economic arrangement and float above the geopolitics. That may be achievable in the early stages, but if this becomes a Cold War by proxy each side will expect friends to become allies. A similar studied myopia informs the grand plan for all members of the Asia-Pacific Economic Cooperation (APEC) forum and their other agreements to 'dock' onto this US-centred treaty and form one regional APEC free trade agreement. Repeated attempts to achieve that goal have foundered since it was first proposed in the early 1990s because there are divergent economic models and strategic relationships among APEC's 23 members. It is true that all the TPPA countries have their own reasons for being in this game, and some, such as Vietnam, see it as constructing their own bulwark against China. But there is no evidence to suggest those decades of resistance to a binding and enforceable US template for the Asia-Pacific will simply melt away.

The US Pacific century

US President Barack Obama and Secretary of State Hillary Clinton left no doubts at the APEC meeting they hosted in Honolulu in November 2011 about the drivers behind the TPPA.

The US aims to revive its geopolitical, strategic and economic influence in the Asian region to counter the ascent of China, in part through constructing a region-wide legal regime that serves the interests of, and is enforceable by, the US and its corporations. In the TPPA context, what the US wants is ultimately what counts.

Expanding on her article entitled 'America's Pacific Century' in the November 2011 issue of *Foreign Policy* magazine, Clinton said the security and economic challenges that currently confront the Asia-Pacific 'demand America's leadership'. Officials described the US role as 'the anchor of stability in the region', committed to 'managing the relationship with China, economically and militarily'.

US Trade Representative Michael Froman taking part in the 19th round of TPPA talks which was held in Brunei in August. 'The TPPA would create international norms that would be good for resurrecting US strategic and economic hegemony.'

According to Obama's advisers, he made it 'very clear' during his bilateral discussions with China's President Hu Jintao 'that the American people and the American business community were growing increasingly impatient and frustrated with the state of change in the China economic policy and the evolution of the US-China economic relationship'. China had failed to show the same sense of 'responsible leadership' as the US had tried to do.

At the TPPA leaders' meeting Obama had talked about establishing international norms that would 'be good for the United States, good for Asia, good for the international trading system – good for any country in dealing with issues like innovation and the discipline of state-owned enterprises (SOEs), creating a competitive and level playing field'. Above all, the TPPA would create international norms that would be good for resurrecting US strategic and economic hegemony.

The bellicose tone intensified during the 2012 US presidential election campaign. Republican candidate Mitt Romney complained that Obama had not been tough enough with China and then endorsed the TPPA as a 'dramatic geopolitical and economic bulwark against China'. Obama was equally belligerent. While China could be a partner, America was 'sending a very clear signal' that it is a Pacific power and intended to have a presence there. In a coded reference to the TPPA he said 'we're organising trade relations with countries other than China so that China starts feeling more pressure about meeting basic international standards. That's the kind of leadership we've shown in the region. That's the kind of leadership that we'll continue to show'.

There is some tension between the antagonistic foreign policy position of the State Department and the commercial drivers of the TPPA. China is the ultimate target of every US major proposal in this 'new generation, twenty-first century agreement', in particular stricter protection for intellectual property rights, disciplines on 'anti-competitive' state-owned enterprises, and processes and rules to stop 'unjustified and overly burdensome' regulation. It is unclear how they intend to get China to adopt these rules. Sometimes it sounds like an encirclement strategy, creating a model that dominates the Asia-Pacific and forces China first to adjust, and ultimately to accede to the TPPA. At other times, the target seems to be China's alliances and operations in third countries to undercut its economic foothold and strategic influence.

The US's potential leverage over China stepped up a notch with the announcement in February 2013 of negotiations for a Trans-Atlantic Free Trade Area (TAFTA) between the US and the EU bloc of 27 countries. There is a synergy between the EU's Global Europe strategy to externalise its internal regulatory regime and the US goal for the TPPA to provide a seamless regulatory environment for capital, goods, services, data and elite personnel throughout the Asia-Pacific. But there is the sticky question of whose regime would rule, given their longstanding conflicts in areas such as agriculture, food safety, telecommunications and intellectual property. The commercial and strategic attractions of a trans-Atlantic pact are obvious, especially for the US. If they were able to pull it off, America would span the powerful TPPA and TAFTA blocs, massively boosting its power in the face of the BRICS.

China's diplomatic counter

China's public response has been measured. In late September 2011, China's Ambassador to the World Trade Organisation (WTO) said diplomatically that they had 'no objections to the TPP' and were waiting to see whether there was a possibility that China might be involved in the discussions. Speaking immediately before the APEC Summit in 2011, a senior Chinese official more sharply criticised US goals as 'too ambitious' and called for a balance between the TPPA and 'other paths to achieve multilateral and regional trade liberalisation'. The TPPA negotiations should be 'open'; China had not been invited to participate. The US replied that any country must apply to join and demonstrate that it is prepared to operate by the TPPA's gold-standard 21st-century rules.

China has a number of options. Ignoring the TPPA in the hope that it stalls and goes the way of the Doha Round of WTO negotiations and the moribund Free Trade Area of the Americas carries too high a risk. China could seek to join the talks indirectly through its Hong Kong proxy, but that would bring the extensive holdings of China's SOEs in Hong Kong under the TPPA disciplines. It would also expose Hong Kong's governance processes to unpalatable obligations on process, disclosure and external participation.

China could make a direct request to participate in the TPPA. That would set off a feeding frenzy among the TPPA negotiating countries that do not have a free trade agreement with China: the US, plus Canada, Japan, Mexico and Australia. But accession involves a lengthy and demeaning process of bilateral discussions and endorsement by each existing participant, then a collective decision to allow them entry, followed by a 90-day notification to the US Congress. The process for Canada and Mexico took a year. They were told they had to accept everything that had been agreed by the time they formally joined the negotiations, but they were not permitted to see the text itself before then. Even though the US ensured that Japan's accession was expedited, it will come to the table in late July 2013 on the same terms: Japan will not have had access to the formal texts and will not be able to reopen anything that has already been agreed in negotiations. In reality, many of the chapters of greatest interest to Japan will not have been concluded, which guarantees that an October deadline is unachievable.

It seems inconceivable that China would agree to a process of bilateral discussions and arduous preconditions simply to get to the table, and accept a raft of US-drafted rules that are designed to cripple China's principal sources of commercial advantage.

The most realistic option is for China to grow its own mega-group. That is already in play. China has a free trade agreement with ASEAN whose scope has progressively expanded from goods to services to investment. It is in bilateral negotiations with South Korea, and the first talks for a China-Japan-Korea FTA were held in March 2013. These relationships are crucial for China. There are ongoing foreign policy tensions with Japan over the disputed Diaoyu/ Senkaku islands and this was clearly a factor in Japan joining the TPPA talks, despite vigorous domestic opposition. However, South Korea has said it will not follow suit at this stage because it is focusing on the China negotiations and the three-way deal with Japan.

China's other major counter-play is the 16-country Regional Comprehensive Economic Partnership (RCEP), which brings China and the 10 ASEAN countries together with India, South Korea, Japan, Australia and New Zealand – but not the US. The talks were launched in November 2012. The rhetoric is similar to the TPPA, with supporters describing it as 'a framework within which business can use the region's resources to best effect in generating higher living standards and welfare for the region's people'. There are similar expectations around services and investment liberalisation, supply chains and connectivity, but they are weaker in relation to intellectual property, domestic regulatory reforms, environment, labour, government procurement and non-tariff measures such as consumer protection laws.

Whereas the US sees the TPPA as a vehicle for American leadership in the Asia-Pacific, ASEAN researchers assert 'it is in the interests of East Asia and the world as a whole that East Asia should be the engine of growth for the world economy', while being open to the rest of the world. The RCEP negotiations and agreement itself should follow the precedent set by the ASEAN Economic Community and should be guided by the 'ASEAN way'.

The ethos of the China and ASEAN-led project is fundamentally different from the US-led TPPA. Rather than a uniform commitment to a 'gold-standard twenty-first century agreement', the RCEP will recognise 'the individual and diverse circumstances of the participating countries'. Whereas the TPPA has rejected any special and differential treatment for poorer countries beyond longer phase-in periods and some technical assistance, the RCEP promises to 'include appropriate forms of flexibility including provision for special and differential treatment', especially for least developed countries.

Seven countries currently span both sets of negotiations: Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam. The timeframe is to conclude an RCEP agreement by the end of 2015. The US clearly does not want these negotiations to advance until it has locked the crossover countries into the orbit of its own TPPA rules, especially those with which it does not already have a free trade agreement. That will become more difficult with Japan at the table.

If both agreements were eventually concluded, countries like New Zealand that are party to both would face some hard decisions further down the line. The two agreements will reflect divergent paradigms, as well as geopolitical allegiances. Parties would be required to implement quite different sets of obligations, and compliance with them both would be enforceable by state parties and foreign firms. ◆

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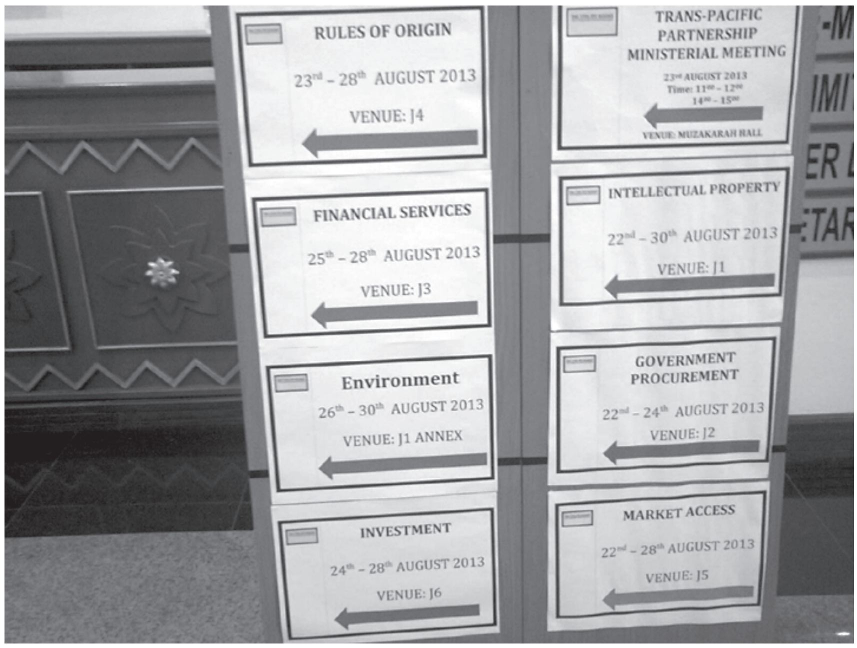
The TPPA: Some contentious issues for developing countries

Although the TPPA talks are shrouded in secrecy, it is possible to ascertain some of its main issues from leaked drafts and previous free trade agreements negotiated by the US. *Martin Khor* discusses some of the more problematic of these.



Sanya Reid Smith

The negotiating schedule on display at the venue of the 19th round of TPPA talks in Brunei in August. Only a small part of the TPPA is about trade as such; most chapters are on other issues.

THE nature and effects of free trade agreements (FTAs) have become a topic of public discussion, especially with the 18th round of talks on the Trans-Pacific Partnership Agreement (TPPA) that took place from 15 to 24 July in Malaysia.

Not much is known about the TPPA drafts. But with some of its chapters leaked and available on the Internet, and since much of the TPPA is likely to be similar to bilateral FTAs that the United States has already signed, we can have a good idea of its main points.

As can be expected, there are many contentious issues to consider, especially for developing countries.

(The countries involved in the TPPA negotiations are Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. Japan has just joined too.)

Trade and beyond

Actually, only a small part of the TPPA is about trade as such. Most chapters are on other issues, like services, investment, government procurement, disciplines on state-owned enterprises and intellectual property. Joining the TPPA or similar FTAs will mean a country having to make often drastic changes to existing policies, laws and regulations, which will in turn affect the domestic economy and society.

On trade itself, the TPPA countries will have to remove tariffs on almost all products coming from one another. Perhaps only one or two products can still be protected. The main implication is that local producers and farmers would have to compete with tariff-free imports from other TPPA countries. This may lead to loss of market share or closure of some sectors.

Ironically, agricultural subsidies, which are the main trade-distorting practice of developed countries like the US, have been kept out of the agenda of the TPPA (or other FTAs involving Europe). The developed countries are clever not to include what would be damaging to them. Thus the developing countries are deprived of what would have been the major trade gain for them.

On services and investments, we can expect that TPPA countries will have to open all their services and investment sectors to the entry and establishment of companies, in manufacturing as well as services including finance, commerce, telecoms, utilities, and professional and business services. If a country wants to exclude any sector, it will have to list this in a table of exceptions, and this will also be subject to negotiations. Future new services cannot be excluded as they are not even known yet today.

In the investment chapter, the country will have to commit not only to liberalise the entry of foreign companies, but also to protect the foreign investors' rights in an extreme way that goes far beyond what is recognised in national laws and courts. For example, the foreign investor includes any person or company who has an asset (factory, land, shares, contract, franchise, intellectual property, etc.). 'Fair and equitable treatment' to be given to the foreign investor has been interpreted in past cases to include a standstill on (i.e., no changes in) regulation.

Thus, any new laws or changes in laws and regulations that the foreign investor claims will affect its future revenues can be challenged in an international tribunal for monetary compensation. The regulations could be economic (e.g., terms in contracts, type of or ratios on foreign ownership, financial regulation including in a crisis), health-related (e.g., food safety, tobacco control, provision of cheaper medicines), environment-related (e.g., ban on chemicals, policies on rivers, forests and climate change) or social (e.g., affirmative action for disadvantaged groups or communities).

TPPA countries have agreed to allow foreign companies to sue governments in an international arbitration tribunal (usually the International Centre for Settlement of Investment Disputes, based in the World Bank in Washington DC) for compensation for expropriation, or for not giving them fair treatment. Expropriation is defined not only as confiscation of property or breaking of contracts, but also as reduction of revenues due to a change in policies and regulations.

These investor-state disputes can cost countries a lot. A tribunal awarded an American oil company $2.3 billion against Ecuador's government in 2012. Indonesia is being sued for $2 billion for withdrawing a contract that a state government made with a UK-based company.

The TPPA will also open up government procurement, with foreigners allowed to bid on similar terms as locals for goods, services and projects of the federal government (and possibly also state and municipal governments) above a threshold value. Existing preferences in government procurement for local companies will be affected, as will the ability of government to use its spending and procurement policy to boost the domestic economy and as a major social and economic policy instrument.

Since government procurement contracts are considered investments, the foreign supplier can sue the government at an international tribunal by claiming unfair treatment including a renegotiation of contract.

There is also a sub-chapter on state-owned enterprises (SOEs). The US and Australia are proposing disciplines on the operations of SOEs, including commercial companies in which the government has a share. This would restrict the state's ability to govern or manage government-linked companies, or provide them with incentives and preferences. It would have serious implications for many a developing country whose success is based on the role of the state in the economy and on public-private sector partnerships.

The chapter on intellectual property has generated public debate because it obliges the TPPA countries to have intellectual property laws far beyond the existing World Trade Organisation (WTO) rules. Longer patent terms and restrictions on the state's policy freedom to promote generic medicines are expected to raise the prices of medicines. Tighter copyright rules would also affect access to knowledge, including books, journals and digital information. Local producers in industry may also find it more difficult to upgrade their technologies and local farmers could have less access to agricultural inputs including seeds.

These are the specific issues that are or should be at the centre of the TPPA negotiations. There are many benefits to the foreign investors or companies, as contrasted to the local, as can be seen from the above. Local companies would lose a lot of their present advantages or preferences, and they cannot stake a claim to 'fair and equitable treatment' nor sue the government in a foreign court, unlike their foreign counterparts.

Naturally, there are pros and cons to any agreement. Any potential gain for a country in exports or investments should be weighed against potential losses to domestic producers and consumers, and especially the loss to the government in policy space and potential payouts to companies claiming compensation. ◆

Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

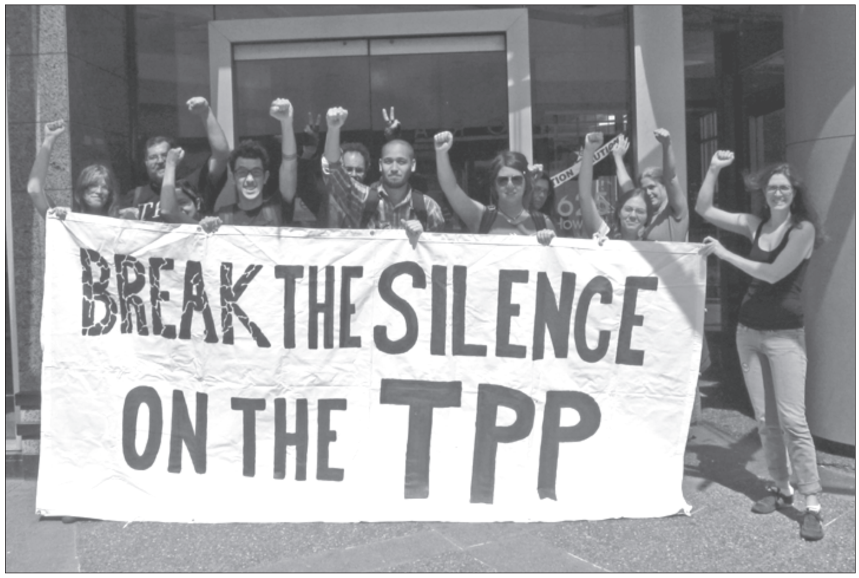
Under the TPPA, member countries would have to remove import tariffs on almost all products coming from one another, risking the viability of local producers and farmers.

The TPPA would restrict the state's policy freedom to promote generic medicines, which is expected to raise medicine prices.

Covert partnership deal has huge destructive potential

Two leading US activists charge that 'the secrecy of the TPPA process represents a massive assault on the principles and practice of democratic governance'.

Lori Wallach and Ben Beachy



A process against the lack of transparency surrounding the TPPA process.

THE Obama administration has often stated its commitment to open government – and justifiably so. We live in the age of online transparency and online democracy. Yet, the administration is keeping the contents of the Trans-Pacific Partnership Agreement (TPPA) – the most significant international commercial agreement since the 1995 World Trade Organisation – as secretive as possible.

The deal has been under negotiation since 2008, and the administration is hoping negotiations can be concluded by the end of 2013.

The 18th round of negotiations wrapped up in July in Kota Kinabalu, Malaysia. The TPPA is a sweeping pact that would directly affect many of the core tenets on job security, food safety, financial stability, affordable medicines, Internet freedom and democratic lawmaking.

Even the George W Bush administration, hardly a paragon of transparency, published online the negotiating text of the last similarly sweeping agreement, called the Free Trade Area of the Americas, in 2001.

For the TPPA, the Obama administration's trade officials have even denied repeated requests from the US Congress to access the draft agreement text.

After congressional and public outcry against the remarkable secrecy, the administration is finally allowing limited access to a few congressional members. But it is still keeping the public in the dark and denying members of Congress the negotiation observer status they have enjoyed in the past. This is astounding, given that the US Constitution provides Congress exclusive authority over trade policy.

There is one important exception to this unprecedented wall of secrecy, however. A big-business-dominated group of more than 600 official US trade 'advisers' enjoy privileged access to TPPA texts and negotiators.

This disturbing combination of extraordinary secrecy towards the US legislative branch and the American public on the one hand, and chumminess with big business on the other hand, matters a great deal. Why? Because the TPPA itself is such a big deal.

All signatory countries' national and local laws and policies in non-trade areas would be required to conform to the TPPA's terms. Failure to do so would subject countries to trade sanctions. Several proposed chapters have leaked, providing evidence of how widely this pact extends far beyond traditional 'trade' matters.

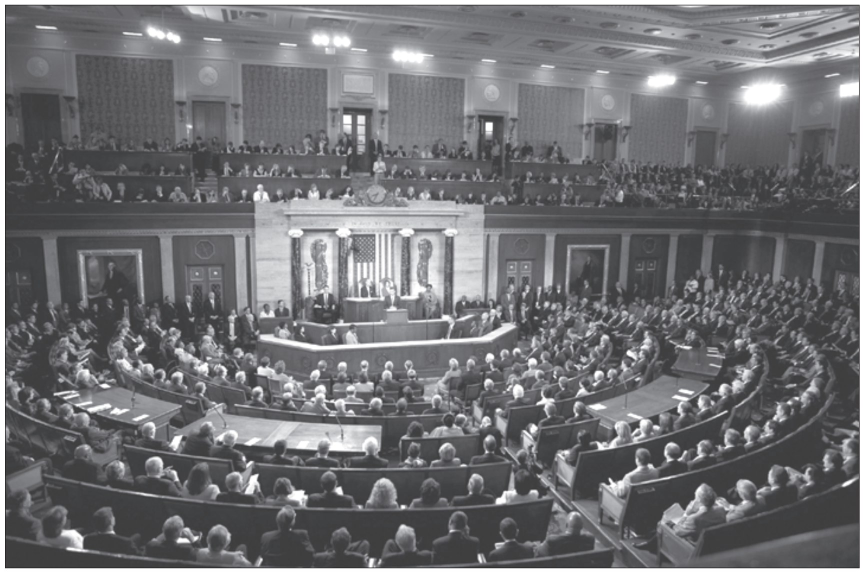
Only five of the TPPA's 29 proposed chapters deal with traditional trade issues. Most chapters would reach very directly into people's lives. In the United States in January 2012, a passionate debate exploded over a legislation that would curtail Internet freedom. Wikipedia, Google and a host of other major websites blacked out their sites to protest.

A big-business-dominated group of more than 600 official US trade 'advisers' enjoy privileged access to TPPA texts and negotiators.

That legislation, the Stop Online Piracy Act (SOPA), suffered a fatal blow in the US. But now, the very corporations behind SOPA hope to reincarnate SOPA within the TPPA framework. The sweeping copyright terms proposed for the deal threaten to turn our daily web browsing into a maze of censored messages.

Another leaked portion of the TPPA text would take aim at policies to control medicine costs. Pharmaceutical companies are among the firms enjoying privileged access to TPPA negotiators as official 'advisers'. They have long lobbied against government efforts to keep the cost of medicines down. Their goal is to keep their already unaffordably high profit margins up.

One leaked TPPA text reveals terms that would allow pharmaceutical firms to challenge the measures that the US government uses domestically to negotiate lower medicine costs for Medicare, Medicaid and veterans' health programmes.



Although the US Constitution provides Congress *(pic)* **exclusive authority over trade policy, the Obama administration is denying Congressional members negotiation observer status in the TPPA talks.**

Given that ballooning health care costs are also the single largest contributor to long-term US budget deficits, this isn't just a vital pocketbook issue for vast numbers of Americans. It is why even those who care first and foremost about the US national debt should care about the TPPA.

What about Wall Street's agenda in the TPPA? The mission of big bank lobbyists is to water down the post-crisis regulatory efforts that aim at reining in the financial sector's excessive risk-taking.

The TPPA would help their cause. While the International Monetary Fund has shifted position, now supporting the use of capital controls to mitigate and avoid financial crises, the TPPA would ban the use of such policies.

The deal's proposed text on financial services is based on the very same deregulatory model that led to the global financial crisis. Incredibly, the TPPA would also forbid bans on risky financial products – such as the toxic derivatives that led to the massive AIG bailout.

At the end of the day, one big question remains. If the changes that are now being stealthily hatched in TPPA negotiations were being contemplated by Congress or a US federal agency, they would be subject to fierce public debate. How can those of us who would have to live with the TPPA's results – the United States and other involved countries – be denied the details, much less a say?

Perhaps because if the text were made public, it would become clear that the deal now envisioned could not be signed. Indeed, that was the view of Ron Kirk, US President Barack Obama's top trade official until earlier this year.

Michael Froman, who recently replaced Kirk, is now the public face of the administration's strategy and the apparent calculation that underlies it: when upending a vast body of consumer, environmental and worker protections for the sake of narrow corporate interests, it's better to work in the dark. Such extreme secrecy is bound to backfire.

The secrecy of the TPPA process represents a massive assault on the principles and practice of democratic governance. That is untenable in the age of transparency, especially coming from an administration that is otherwise so quick to trumpet its commitment to open government. ◆

'The sweeping copyright terms proposed for the [TPPA] threaten to turn our daily web browsing into a maze of censored messages.'

Lori Wallach is director and Ben Beachy is research director of Public Citizen's Global Trade Watch. This article was published in the Bangkok Post *on 5 August 2013. Reprinted with permission.* *www.bangkokpost.com*

New threat to state's economic role

The economically successful developing countries are characterised as having a strong 'developmental state'. But this role of the state is coming under attack in new trade agreements such as the TPPA.

Martin Khor

TWO new trade agreements involving the two economic giants, the United States and the European Union, are leading a charge against the role of the state in the economy in developing countries.

Attention should be paid to this initiative as it has serious repercussions on the future development plans and prospects of the developing countries.

The role of the state, or of government, in development is a subject of longstanding and important discussion. In fact, some economists and analysts consider it perhaps the most important issue that determines the difference between economic success and failure in developing countries.

The immediate post-colonial period saw a tendency to a strong state, including government ownership of some key sectors, including industry and banking.

Past decades have witnessed a wave of privatisation across both rich and developing countries. But the state still owns or controls utilities, infrastructure, public services, banks and a few strategic industries in many developing countries.

State enterprises or commercially run companies owned by or partially linked to the government play an important role in many a developing country.

Private companies also receive state assistance and support in many ways, including loans to small and medium enterprises and farmers, subsidies and tax breaks for research and development or technology purchase, preferences in government procurement, and infrastructure provision including in special economic zones.

Countries provide incentives for foreign companies, such as tax-free status. However, the state also has special treatment for local companies, such as grants, cheaper-than-normal credit and subsidies, and government contracts.

An employee of Vietnamese state-owned enterprise Vietnam National Chemical Group at work. The US and the EU aim to curtail the role of state-owned enterprises through two trade agreements they are promoting.

Under attack

The developmental role of the state in developing countries is now coming under attack from developed countries.

This is promoted by the big companies in the US, Europe and Japan, which seek to enter the markets of developing countries which are the source of their future profits.

The support given by the state to domestic companies is seen by the multinational companies as a hindrance to their quest for expanded market share in developing countries. They are thus seeking to change the worldview and policy framework in developing countries, to get them to reduce the role of state enterprises as well as to curb the government's promotion of local private companies.

The two latest big attempts towards this are through the proposed Trans-Pacific Partnership Agreement (TPPA) and Trans-Atlantic Trade and Investment Partnership (TTIP).

A sub-chapter on state-owned enterprises (SOEs) is a prominent part of the TPPA. The US and Australia are leading the move to have rules to discipline the role of the government in the economy, through a two-pronged approach. The first is to get government or other monopolies to behave in a 'non-discriminatory' way, including when they buy or sell goods and services. This includes prohibition against their giving preferences or incentives to local firms.

Secondly, companies that are linked to the government (including through a minority share) should not get advantages vis-à-vis other firms in commercial activities. Of course the developed countries that are proposing this are thinking of their companies – how they can get more access to developing countries' markets.

In the TTIP, a US-EU agreement for which negotiations started in July, the EU is preparing a sub-chapter on SOEs with rules that seem quite similar to what the US and Australia are proposing in the TPPA.

Although the TTIP only involves Europe and the US directly, the rules it sets are intended to have consequences for other countries. According to press reports, the two economic giants are planning that the TTIP rules will become the standard or template for future bilateral agreements that also include developing countries. They also hope that these rules will be internationalised in the World Trade Organisation, which has over 150 member states.

The EU's position paper on SOEs says that its aim is to 'create an ambitious and comprehensive standard to discipline state involvement and influence in private and public enterprises'. It adds that 'this can pave the way to other bilateral agreements to follow a similar approach and eventually contribute to a future multilateral engagement'.

In other words, the constraints on the role of the state, and the reduction of the space for behaviour or operations of state-linked companies, will become the way of the future for all countries, if the US and European plans succeed.

What is moving these countries in this direction? It is quite well known that the negotiating positions of the developed countries are greatly influenced and in fact driven by their big companies. Their trade policymakers and negotiators usually act on behalf of these companies.

Reports by the specialist trade bulletin *Inside US Trade* show how corporate groups like the US Chamber of Commerce and the Coalition of Services Industries have been pushing for the new rules on SOEs, and also how they are seeking to open up the markets of developing countries especially China.

These attempts to curb the role of the state in the economy are worthy of serious study and counter-action.

Developing countries that succeeded in economic development were able to combine the roles of the public and private sectors in a partnership that advanced overall national development. Asian countries, including Japan, South Korea, Malaysia, Singapore and China, have pioneered this model of public sector collaboration with the private sector.

Those few developing countries that managed to get development going were all driven by the 'developmental state', or the leadership role of government in establishing the framework of economic strategy, and the collaboration between the state, state enterprises and commercial companies, including those in which the state has an interest.

If developing countries have to come under new international rules that curb the role of the state and that reshape the structure of their economies, then the prospects for future development will be adversely affected. ◆

Privileging investors over the public interest

One of the most troubling aspects of the TPPA is its investment chapter which contains highly controversial provisions (dubbed 'investor-state dispute settlement' or ISDS) empowering an investor to sue the host state. *Fauwaz Abdul Aziz* examines this extraordinary legal remedy.

THE investment chapter that has been proposed by the US for the Trans-Pacific Partnership Agreement (TPPA) is based primarily on the template of US free trade agreements (FTAs), particularly provisions in the North American Free Trade Agreement (NAFTA) and its Chapter 11 on investment. This immediately raises alarm bells, as NAFTA and NAFTA-style investment provisions have been widely criticised for their lopsided terms prioritising foreign investors and their investments over domestic investors as well as over health, environmental and other public interest concerns.

A 2013 United Nations Conference on Trade and Development (UNCTAD) report in fact found that NAFTA has been the agreement most often invoked as a basis for investor-state dispute claims.[1] What do NAFTA's Chapter 11 and other NAFTA-style investment agreements contain that seem to have emboldened and encouraged foreign investors to challenge governments and government regulations so frequently? What are the features of NAFTA and NAFTA-style investment protection and promotion contained in the TPPA, in particular, that are the source of concern?

Definition of investment

The investment chapter that the US has proposed for the TPPA has an overreaching definition of 'investment' that governments are obliged to protect and promote; it goes far beyond 'real property'. As UNCTAD had noted in a 2005 report, a broad definition of investment may not be consistent with a government's development policy at every period in the life of a treaty. More specifically, the danger of such an overreaching definition is that it may commit a host country to permitting, promoting or protecting forms of investment that it did not contemplate at the time it entered into an agreement and would not have agreed to include within the scope of the agreement had the issue been raised explicitly.[2]

Gus Van Harten points out the typically broad definition of investment contained in bilateral investment treaties such as the US-Ecuador BIT, which extends beyond tangible assets to include any intangibles and assets such as market share, goodwill and intellectual property rights.[3] Similarly, 'investment' in the draft text of the TPPA's investment chapter is defined as:

'every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include … an enterprise; shares, stock, and other forms of equity participation in an enterprise; … loans …; futures, options and other derivatives; … turnkey, construction, management, production, concession, revenue-sharing and other similar contracts; … intellectual property rights …; licences, authorisations, permits and similar rights conferred pursuant to domestic law; and … other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges…'

The wide-ranging breadth of the term 'investment' in investment treaties means that disciplines placed on governments will often overlap with disciplines arising from agreements on trade in goods, trade in services or intellectual property rights. Moreover, as a result of this wide coverage, the obligations on a government in a BIT will apply to virtually any governmental measure carried out at any branch or level of government and expose a wide range of domestic laws, regulations and policies to foreign investor challenge and claims for compensation, unless that measure has been expressly exempted from being challenged in the treaty.[4]

As Harvey Purse and Sanya Reid Smith have noted in their paper 'Some impacts of a TPPA investment chapter', NAFTA cases show that both developed- and developing-country regulations, in areas including health, environmental protection and water conservation, could be challenged under its investment protection provisions. Equivalent investor protections in other treaties have seen governments sued over the latter's affirmative action policies, regulation of the oil sector, measures taken to reduce budget deficits during a severe financial crisis, the investor's permits being revoked because it violated the law, value-added taxes, the rezoning of land, measures on hazardous waste facilities, regulation of water companies, declaration of an area as a nature reserve to preserve the unique wildlife of the region, and treatment at the hands of media regulators.[5]

The very real danger with the TPPA's investment chapter is that, since it replicates the extreme protections and promotion of foreign investors and their investments contained in NAFTA, the same outcome and barrage of investor-state dispute challenges will be replicated when the TPPA comes into effect.

An employee at a US-owned car assembly plant in Mexico. The wide-ranging investor protection clauses in the TPPA would create a lopsided 'playing field' for foreign investors to operate and dominate the economies of TPPA countries.

Investors and investor rights

As in NAFTA's Chapter 11, Article 12.2 of the proposed investment chapter of the TPPA defines 'investor' such that firms without significant investments in a TPPA country – and even investors from non-TPPA countries – may exploit the protections and privileges contained in the TPPA for foreign investors and the agreement's enforcement obligations. Article 12.2 of the draft text defines 'investor' as 'an investor of a TPPA Party, a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party…'

As Lori Wallach and Todd Tucker have put it in 'Public interest analysis of leaked Trans-Pacific Partnership (TPP) investment text', such a definition fails to require that such an investor have 'actual business activities or make a significant commitment of capital in the host country'. This has seen in the past firms 'that have made no real investment in a country dragging governments through costly foreign tribunal proceedings' merely on the basis of 'having a staff person or two and a minor paper trail in the claimed home country' and thereby passing off as having 'substantial business activities' in that country[6] when it may have merely been a holding company established formally in the host country but which is actually owned and controlled by investors of a third, non-party.

Van Harten illustrates one form of 'forum-shopping' – made available by such a liberal approach to defining 'investor' – in the case of *Aguas del Tunari SA v. Republic of Bolivia*. The US firm Bechtel – after appraising that public opposition had arisen against its privatised water utility in the Bolivian city of Cochabamba – reorganised its corporate structure so as to incorporate three Dutch holding companies in between itself and the Cayman Islands firm that owned the Bolivian firm Aguas del Tunari, which was a party to the Cochabamba water concession.

'Tracing this chain of ownership,' Van Harten states, 'the actual majority shareholder of Aguas del Tunari (and of the concession) was a US firm that had no access to a US-Bolivia BIT (because none was in force at the time). However, the broad definition of "investor" in the Netherlands-Bolivia BIT allowed Bechtel effectively to re-create itself as a Dutch investor, by way of Dutch holding companies, and to bring a claim against Bolivia under the Netherlands-Bolivia BIT.'[7]

Based on such provisions as those contained in NAFTA and the draft TPPA investment text, foreign investors can avail of such liberal approaches to 'forum-shopping' while governments such as those signing on to the TPPA 'must assume that any foreign investor in its economy may be able to access compulsory arbitration under an investment treaty even where the host state does not have a BIT with the state of origin of the foreign investor itself.' In this way, Van Harten concludes, such an approach in defining 'investor' strengthens the ability of foreign investors to redesign their corporate structure in order to maximise their opportunities to bring a claim against the government of the country in which their assets are located.[8]

National treatment, performance requirements

Many quarters, such as UNCTAD, have noted the prudence of maintaining discretions to impose conditions on foreign investors to enter and operate in a host country, for a number of industrial development strategies: for protection, promotion and development of infant and export-oriented industries and small and medium enterprises, defence capabilities, creation, preservation and promotion of livelihoods, to regulate a monopoly in the public interest, technology transfer, cultural considerations, to preserve the environment, natural wealth and resources, and so on. Similarly, 'performance requirements' imposed on foreign investors have frequently been used by both developed and developing countries to ensure that benefits accrue to the national interest amidst moves to attract foreign investments.[9]

But Article 12.4 (on 'national treatment') of the draft TPPA investment chapter states that a TPPA party shall accord to investors of other parties 'treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.' Under this article, each party shall also 'accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.'[10]

The TPPA's 'national treatment' clauses, as proposed in the US draft text, would thus prohibit countries from restricting foreign investment within their territories, while Article 12.7 explicitly prohibits governments from imposing performance requirements on foreign investors from TPPA countries, such as requirements 'to export a given level or percentage of goods, to achieve a given level or percentage of domestic content… to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory… to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment… [or] to restrict sales of goods in its territory that such investment produces by relating such sales in any way to the volume or value of its exports or foreign exchange earnings or to supply exclusively from the territory of the Party the goods that such investment [produces] to a specific regional market or to the world market.'

It is important to note that while governments are stopped from treating foreign investors less favourably than domestic ones, there is no clause to prohibit the reverse – as the discussion below will illustrate – of foreign investors being accorded unfairly better treatment than their domestic counterparts.

Minimum standard of treatment

Article 12.6 of the US' draft investment text stipulates that each party shall accord to investors from other TPPA parties 'treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.' 'Fair and equitable treatment' includes the minimal obligatory treatment not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world, while 'full protection and security' requires each party to provide the level of protection required under customary international law.

Wallach and Tucker point out that as in NAFTA, the TPPA would provide for foreign investors the right to claim damages for even government measures that reduce their expected future profits (Article 12.12 on indirect expropriation) or differ from the expected regulatory environment that they might have had before the introduction of the new measure (Article 12.6 on minimum standard of treatment). This contrasts with other FTAs which – while not completely sufficient – at least had language to ensure that 'for greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector'.[11]

Such language is absent in the draft investment text proposed by the US for the TPPA. The inclusion of NAFTA wording on minimum standard of treatment and the rights to compensation for indirect expropriation 'directly contradicts the assurances TPP governments have given to legislators and public interest advocates that the pact would safeguard regulatory sovereignty.' Inclusion of these terms in the TPPA would, in fact, provide ample opportunities for investors to challenge government measures – even those applying to both domestic and foreign firms – and get compensation for them.[12]

Overreaching definition of state measures

Implied in the discussion above is the understanding that, in contrast to previously held assumptions and definitions of property being in reference to real, physical property – which was thus protected from arbitrary government 'expropriation' – NAFTA-like clauses on 'indirect expropriation' have broadened property to include the foreign investor's *expected value* of his/her investment. Indirect expropriation has thus come to include the incidence of that expected value of the investment having been reduced by a government measure. The dominant practice of national legislative and judicial systems with regard to compensation for expropriation is to provide for such compensation only when the government has actually acquired an asset, not when the value of an asset has been adversely affected by a regulatory – or other government – measure.

In other words, 'fair and equitable treatment' has come to mean the onerous obligation of governments not only to ensure a transparent and predictable framework for foreign investors' business planning and investment but also to 'act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor'.[13] Thus, a government measure that leaves a foreign investor's ownership title unaffected but that otherwise causes that investor 'economic harm (even incidental harm, potentially)' can be – and has been argued to be – regarded as compensable expropriation that requires payment of market value damages to the investor. In the case brought by Metalclad Corporation against Mexico under NAFTA, for example, it was concluded that expropriation included 'not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.'[14]

Investor-state dispute settlement

The above discussion shows how NAFTA-based and NAFTA-like concepts and clauses in the TPPA contribute towards forming a lopsided 'playing field' for foreign investors to operate and dominate the economies of TPPA countries. These concepts and clauses achieve this by (i) being applicable to practically any government law, policy and regulation that affects the assets of foreign investors and (ii) setting out sufficiently ambiguous standards for tribunals to interpret challenges in favour of foreign investors. What now remains is to discuss the controversial investor-state dispute settlement (ISDS) mechanism that has provided for the international adjudication and interpretation of these clauses and concepts whenever a dispute arises between a foreign investor and a host state over a claimed violation of investment protection and promotion provisions.

International arbitration under the ISDS model propagated by NAFTA, the TPPA and other NAFTA-like investment protection provisions allows investors to directly challenge – and claim compensation for – government measures without the otherwise accepted 'exhaustion requirement' of seeking legal remedies within the host state. Internationally enforceable damages are awarded to foreign investors for, as discussed above, a whole range of legislative, policy or regulatory measures, by way of a system that is structurally biased against host governments.

The arbitral tribunal determines the available policy space of host governments in a context where only one class of parties (the investors) brings the claims – states cannot bring an ISDS dispute to the arbitration tribunal. In this way, arbitrators are incentivised to interpret and award in favour of investors so as to encourage more claims and more appointments, either as arbitrators or as counsel for foreign investors.[15]

Awards made by arbitration tribunals cannot be reviewed (other than for jurisdictional errors or serious procedural unfairness), whether in the same arbitration system or in any domestic court. In most cases, arbitration provides for the process as well as any decisions to be kept secret unless both of the disputing parties agree otherwise.[16]

Occidental Petroleum Corporation was awarded $1.77 billion in 2012 in its case against Ecuador, the highest award in the history of investor-state dispute settlement.

Criticisms have also been levelled against the ISDS system due to the 'chilling effect' whereby investors' suits and a potential award may cause governments to abandon public measures. Many have cited the case of *Ethyl Corporation v. Government of Canada*, which saw the Canadian government banning a gasoline additive on environmental and public health grounds, but subsequently reversing that ban following the company's arbitration claim under NAFTA against Canada for expropriation. Before the matter was decided by the tribunal (after the tribunal decided that it had jurisdiction over the claim), Canada settled and agreed to remove the ban, declare publicly that the gasoline additive was not an environmental or a health risk, and pay $19 million in compensation to the US firm.

Conclusion

The above discussion has touched upon a number of cross-cutting issues and concerns that have been brought to light on account of the developments relating to ISDS. These include the issue of transparency and confidentiality of ISDS and the persistence of investor claims, or threats, against governments over measures introduced on environmental, health, financial crisis-related or other public interest grounds. Coupled with other issues that have not been discussed – such as the persistence of divergent and contradictory interpretations by arbitration tribunals of the same or similar investment provisions, as well as the alarming practice of involving specialised firms in financing international arbitration claims against states in exchange for a share in a possible future award or settlement in favour of the claimant – it would seem obvious that a complete relook needs to be taken by policymakers at the ISDS system currently gaining 'popularity' among governments.

Motivation for this relook can derive from recent discovery of the increasing scale and pace of attacks by multinational corporate interests on states in relation to public interest-related measures. In a 2013 report entitled 'Recent developments in investor-state dispute settlement (ISDS)', UNCTAD said it found that the total number of known treaty-based ISDS cases rose to 518 by the end of 2012. Since most arbitration forums do not maintain a public registry of claims, the total number of cases is likely to be higher.

The year 2012 saw 62 new ISDS

cases being initiated, the highest number of known treaty-based cases ever filed in one year under international investment agreements. Sixty-eight percent (42 out of 62) of the new cases involved governments of developing and transition economies as respondents. Sixty-three percent (39) of the new cases were brought on by developed-country investors. Seventy percent (17 cases) of the public decisions addressing the merits of the dispute saw investors' claims being accepted, at least in part, reflecting the highest percentage of rulings against the state. Last year also saw $1.77 billion being awarded to Occidental Petroleum in its case against Ecuador, the highest award in the history of ISDS, arising out of a unilateral termination by the state of an oil contract.

It has also been widely reported that almost $380 million has already been paid out as compensation to firms in successful challenges of state measures, while 70% of decisions in favour of investors as claimants were in relation to actions over the environment and other natural resources.

UNCTAD also pointed out that ISDS arbitrations had been initiated most frequently by claimants from the US (123 cases, or 24% of all known disputes), the Netherlands (50 cases), the UK (30) and Germany (27). The three investment instruments most frequently used as a basis for ISDS claims have been NAFTA (49 cases), the Energy Charter Treaty (29) and the Argentina-United States BIT (17).

But we must also not lose sight of the parallel, or perhaps larger, context of issues in which the problems associated with ISDS are to be framed: the agreement by countries – developed and developing alike – to the surrender of their executive, legislative and adjudicatory prerogatives in the scramble for foreign investments, and to granting ever more – and inordinately higher standards of – protections, liberties[17] and privileges to foreign investors than what is accorded to domestic firms. It is issues such as the scope and overreach of definitions of 'investor', 'investment' and state 'measures', and the interpretations of 'minimum standard of treatment', 'fair and equitable treatment', 'national treatment' and 'expropriation' that need to be reviewed, if not overhauled. A very opportune place for the 12 Asia-Pacific governments negotiating the TPPA to start such a relook is the proposed investment chapter of the TPPA itself as well as other NAFTA-styled investment agreements. ◆

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Endnotes

1. United Nations Conference on Trade and Development (UNCTAD), 'Recent developments in investor-state dispute settlement (ISDS)', available at www.unctad.org/diae.
2. Cited in Harvey Purse and Sanya Reid Smith, 'Some impacts of a TPPA investment chapter', 9.
3. The US-Ecuador BIT defines investment as being: 'every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes: (i) tangible and intangible property...; (ii) a company or shares of stock or other interests in a company...; (iii) a claim to money or a claim to performance having economic value, and associated with an investment; (iv) intellectual property...; and (v) any right conferred by law or contract, and any licences and permits pursuant to law…'
4. Gus Van Harten, 'Policy impacts of investment agreements for Andean Community states', September 2008, 15.
5. Harvey Purse and Sanya Reid Smith, 'Some impacts of a TPPA investment chapter', 1-2.
6. Lori Wallach and Todd Tucker, 'Public interest analysis of leaked Trans-Pacific Partnership (TPP) investment text', 4.
7. Citing the similar case of the 'Fedax arbitration', Van Harten has shown how the foreign arbitration tribunal appointed to preside over a suit against the Venezuelan government allowed a Dutch company to bring its BIT claim against Venezuela concerning promissory notes issued by the Venezuelan government. Prior to the claim, the promissory notes had been transferred to the Dutch company by a Venezuelan firm. Venezuela's argument that the investor had not made an actual investment in the country's economy was rejected. See Van Harten, op. cit., 16-17.
8. Ibid., 17.
9. Purse and Smith, op. cit., 3; Van Harten, op. cit., 25.
10. Even domestic policies that are not applied discriminately but apply equally to both local and foreign firms can be seen as violating investors' rights in the TPPA if a foreign investor can claim that, due to its business model, it ends up experiencing a slightly higher burden in complying with the law, regulation or policy introduced by the host government. See Wallach and Tucker, op. cit., 7.
11. Wallach and Tucker, op. cit., 5-6.
12. Ibid.
13. Van Harten, op. cit., 8.
14. Ibid., 24-25.
15. One study looked at 140 international arbitral cases up to May 2010 and found indications of systemic bias in the resolution of issues in investment treaty arbitration. The tested expectations were that arbitrators tended to favour interpretations that benefit the claimant-investor by expanding the authority of tribunals and by allowing more claims to proceed, especially in cases where the claimant is from a Western capital-exporting state such as the US, France, the UK or Germany. See Gus Van Harten, 'Pro-investor or pro-state bias in investment-treaty arbitration? Forthcoming study gives cause for concern', *Investment Treaty News*, Issue 3, Volume 2, April 2012; and Nicolas Hachez and Jan Wouters, 'International investment dispute settlement in the 21st century: Does the preservation of the public interest require an alternative to the arbitral model?', Leuven Centre for Global Governance Studies, Working Paper No. 81, February 2012, 11.
16. Hachez and Wouters, op. cit.; Wallach and Tucker, op. cit., 5.
17. See letter, available on the Internet, entitled 'Promoting financial stability in the Trans-Pacific Partnership Agreement', dated 28 February 2012.

The Trans-Pacific Partnership Agreement and capital flows

It would appear from leaked drafts that countries signing on to the TPPA will be seriously constrained in exercising controls over the inflow and outflow of capital. *Michael Mah-Hui Lim* explains why this and other provisions in the investment chapter of the proposed agreement are unacceptable.

THE 18th round of negotiations for the Trans-Pacific Partnership Agreement (TPPA), held in Kota Kinabalu, Malaysia, from 15 to 25 July, has just ended. Twelve countries are participating in the TPPA negotiations – Brunei, Malaysia, Vietnam, Singapore, Australia, New Zealand, Chile, Peru, Mexico, Canada and the United States, with Japan joining in only in the 18th round. There are 29 chapters under negotiation, with 14 having been agreed upon. Negotiators hope to complete the process by October of 2013.

The whole negotiation process carried out by government officials, usually from the respective countries' trade ministries, has been clouded in secrecy. This has generated much public concern and discontent in some of these countries. Lawmakers and the general public in Malaysia, for example, have demanded more transparency and information that have not been forthcoming and are also asking for ratification by the full Parliament before signing the Agreement. Several peaceful public demonstrations have been held to oppose Malaysia's participation in the negotiations. The latest occurred on 20 July in front of the hotel in Kota Kinabalu where the negotiations were held. The police took high-handed action, detained 14 of the demonstrators and submitted them to drug testing.

There is enough evidence that free capital flows are highly volatile and create financial, foreign exchange and other forms of macroeconomic instability.

The investment chapter of the TPPA that has been leaked specifically states: 'Each Party shall permit all transfers relating to a covered investment to be made freely and without delay *into and out of* its territory [emphasis added].' In other words, countries participating in the TPPA will not be allowed to exercise any form of controls over the inflow and outflow of capital. This is even more restrictive than the International Monetary Fund (IMF) conditions for regulating capital flows. The IMF, itself an advocate of free capital movements, has been critical of the provisions on capital mobility in agreements like the TPPA, stating in a 2012 report, 'The limited flexibility afforded by some bilateral and regional agreements in respect to liberalisation obligations may create challenges for the management of capital flows.'

It is understood that participants have agreed to this provision in the TPPA investment chapter. However, the final extent of any safeguards and exceptions is unclear. Questions were raised over these concerns at the session that negotiators held with stakeholders in Kota Kinabalu, and the answer was that it is still under negotiation.

In the leaked investment chapter, the safeguards refer specifically to the ability of a government to take *temporary* measures with regard to current account transactions if there are serious balance-of-payments or external financial difficulties, or with regard to payments or transfers relating to capital movement. The questions are: how long does 'temporary' mean and who defines it? Does 'temporary' mean a few months or a few years? In the case of Malaysia, it banned capital outflow for a year during the Asian financial crisis and then changed it to a 10% levy on proceeds from the sale of securities for another year or so. Would the TPPA allow such measures?

In many existing bilateral trade and investment agreements, disputes over ambiguities are settled in international arbitration tribunals whose neutrality has been compromised by conflicts of interest, i.e., some of the judges who sit on the tribunals have also represented companies that brought suits against countries. Furthermore, would these tribunals be in a better position to judge what is best for the countries that imposed capital controls? It would seem that the countries that are affected should judge for themselves when it is prudent to phase out or lift such controls.

The International Monetary Fund (IMF) has stated that 'the limited flexibility afforded by some bilateral and regional agreements in respect to liberalisation obligations may create challenges for the management of capital flows'.

Secondly, the leaked investment chapter of the TPPA specifies a number of very restrictive conditions under which the safeguard measures can be applied. These conditions hold that the safeguards shall:

- be applied on a non-discriminatory basis among the parties
- be consistent with the Articles of Agreement of the IMF for parties that are parties to the said Articles
- avoid unnecessary damage to commercial, economic and financial interests of other parties
- not exceed those necessary to deal with the circumstances described above
- be temporary and be phased out progressively as the situation improves.

Various legal opinions have pointed out that these restrictions serve only to cancel out the safeguards and exceptions provided for earlier and hence should be removed.

Another provision in the investment chapter refers to sovereign debt restructuring. It specifies that a claim cannot be brought against a country that has a negotiated debt restructuring in place except for a claim that the restructuring violates the national treatment (NT) and most favoured nation (MFN) articles. This provision is good as an investor should not claim against a party that already has a negotiated debt settlement in place. However, the provision is weakened by two conditions – the NT and MFN exceptions, and the stipulation that the negotiated restructuring must be accepted by creditors who hold at least 75% of the aggregate principal amount of the outstanding debt. This threshold is too high. Even in negotiated debt restructuring in the private sector, a two-thirds threshold is accepted as binding.

Countries negotiating to sign the TPPA must insist on deleting any provisions in the investment chapter that restrict their ability to regulate capital flows, or at the least that there be sufficient safeguards and exceptions that are water-tight enough to enable them to regulate capital flows for both micro- and macro-prudential reasons as well as to maintain financial and economic stability.

There is enough evidence that free capital flows, particularly those associated with speculative financial transactions like carry trades, are highly volatile and create financial, foreign exchange and other forms of macroeconomic instability to recipient countries. This happened during the Asian financial crisis and also the recent global financial crisis. Countries need the policy space to regulate both the inflow and outflow of capital in order to prevent, manage and overcome financial and economic crisis. Malaysia, as noted earlier, used capital controls successfully to get out of the Asian financial crisis in 1998 and 1999. When Malaysia used them at the time, it was regarded as heretical and vehemently opposed by the IMF. Ten years later, the IMF admitted that capital controls helped Malaysia emerge faster from the crisis.

Another country that used capital controls successfully, to its benefit but seldom publicised, is the United States. In 1963, to stem capital outflows and balance-of-payments problems, the US introduced the interest equalisation tax (IET) to tax US dollar bonds raised by foreign corporations on Wall Street. This tax effectively reduced the international US dollar bonds issued in the US as a percentage of all international US dollar bonds raised worldwide from 72% in 1963 to 55% in 1964 and 28% in 1968. ◆

The Malaysian central bank building. Malaysia used capital controls successfully to get out of the Asian financial crisis in 1998-99.

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Trading away the health of millions

A leading international health network warns that if the US demands on intellectual property rules under the TPPA are accepted, they could severely restrict access to affordable, life-saving medicines for millions.

ENCOMPASSING 12 countries and slated for further expansion across the Asia-Pacific region, the Trans-Pacific Partnership Agreement (TPPA) is a regional trade agreement that will 'set the standard for 21st-century trade agreements going forward'.

The TPPA negotiations are being conducted in secret, but leaked drafts of the US negotiating positions show that the US is demanding aggressive intellectual property (IP) provisions that would roll back public health safeguards enshrined in international trade law in favour of offering enhanced patent and data protections to pharmaceutical companies, making it harder to gain access to affordable generic drugs and hindering needed innovation.

If the US's demands are accepted, the TPPA will impose new IP rules that could severely restrict access to affordable, life-saving medicines for millions of people. Billed by President Obama as 'a model not just for countries in the Pacific region, but for the world generally', the TPPA will set a damaging precedent with serious implications for developing countries.

With its demands, the US is turning its back on previous US global health commitments, including:

- The 2001 World Trade Organisation (WTO) Doha Declaration reaffirming the primacy of public health over trade and confirming that the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to which the US is a party, can and should be implemented in a manner supportive of access to medicines
- The 2008 World Health Assembly Resolution 61.21, the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, to which the US agreed, which states that countries are required to 'take into account, where appropriate, the impact on public health when considering adopting or implementing more extensive intellectual property protection than required by TRIPS'
- The May 10, 2007 New Trade Policy (May 10 Agreement), in which the US Congress and the Bush administration reached a bipartisan agreement to include important public health safeguards in trade agreements with developing countries
- The 2011 UN Political Declaration on HIV/AIDS, which recognises the role that flexibilities in the TRIPS Agreement can play in increasing access to treatment, and calls on UN members to 'ensure that intellectual property rights provisions in trade agreements do not undermine these existing flexibilities'.

The May 10 Agreement represented 'a fundamental shift in US trade policy', scaling back some of the harshest US IP demands for developing countries in order to strike a better balance between protection of IP and public health needs.

However, the US pharmaceutical industry has aggressively lobbied against the May 10 Agreement being applied to the TPPA negotiations. Despite concerns from several members of Congress, the Office of the US Trade Representative (USTR) is shifting US policy away from the May 10 Agreement and toward greater protection of IP rights for brandname pharmaceutical companies in the developing world.

Specific US demands threatening access to medicines

1) Broadening the scope of patentability: the US wants to make it easier to patent minor modifications of old medicines, regardless of whether they offer any therapeutic benefits for patients

Existing flexibility: The TRIPS Agreement includes important flexibilities for governments to decide what types of pharmaceutical products deserve to be protected by patents in a given country. Essential requirements such as 'novelty', 'inventive step' and 'industrial applicability' can be defined by lawmakers in different countries so they are appropriate within the context of national circumstances (i.e., public health needs).

The TRIPS Agreement allows countries to set their own patentability standards, and therefore developing countries like India, the Philippines and Argentina have started defining grounds for rejecting a patent, for instance if the pharmaceutical substance claimed is just a new form of a known substance.

This flexibility is important because it allows governments to prohibit so-called 'evergreening', which enables pharmaceutical companies to extend the patent life and monopoly protection of old drugs simply by making minor modifications to existing formulations or dosages, without necessarily increasing the therapeutic efficacy for patients, or by identifying a new therapeutic use for an existing medicine.

What the US wants: The US is seeking to erode this flexibility by requesting that TPPA countries introduce new rules that would severely limit the ability of each country to define what is 'patentable'.

For example, the USTR proposal for the TPPA requests the patenting of a 'new form, use or method of using' and 'new formulations' of an existing product – even if there is no increase in efficacy – a provision that enables the practice of evergreening.

In addition, the US seeks to require that plants and animals be patentable, as well as diagnostic, therapeutic and surgical methods for the treatment of humans or animals. The TRIPS Agreement explicitly allows governments to exclude these inventions from patent protection. This provision goes beyond even what US law allows, which exempts practising surgeons from patent liability and may preclude the patentability of some diagnostic methods.

Impact on access to medicines: Evergreening significantly affects access to medicines by allowing pharmaceutical companies to extend patent monopolies, potentially keep prices high indefinitely, and delay the arrival of more affordable generic medicines into the market.

The patentability of surgical methods without an exemption for practising surgeons can raise doctors' liabilities if they are found to infringe a patent during the practice of a medical operation. This is the first time that the US has included requirements to patent surgical methods in a trade agreement with developing countries.

2) Restrictions on pre-grant patent oppositions: the US wants to make it harder to challenge invalid or frivolous patents

Existing flexibility: The TRIPS Agreement imposes no restrictions on filing an opposition to the granting of a patent – either before it has been granted (pre-grant opposition) or after (post-grant opposition).

What the US wants: The USTR's proposed provisions would forbid pre-grant oppositions in TPP countries, even those that already have the mechanism incorporated in their national laws. This would mean that third parties will have to wait until the patent is granted to challenge a weak or invalid patent. Forbidding pre-grant patent oppositions not only makes it more costly and cumbersome to oppose a patent, but also deprives patent offices of the benefit of the expertise of third parties or even competitors to the applicant, who may be able to identify inaccuracies in the application before a patent is approved.

Impact on access to medicines: Pre-grant oppositions have successfully precluded granting of patents on several life-saving drugs, thus expanding access by allowing lower-cost generics to enter the market. The use of this safeguard has resulted in rejection (or withdrawal) of key patent applications on important HIV/AIDS medications, including tenofovir, darunavir, nevirapine syrup and lopinavir/ritonavir, allowing generic companies in India to continue to manufacture, supply and export these HIV medicines to other developing countries. Patent oppositions are an essential public health safeguard that can accelerate the entry of generic competition, improve the patent system through public oversight and help reduce over-patenting.

3) Expanding data exclusivity: the US is seeking to grant a back-door route to monopoly status

Existing flexibility: Data exclusivity is not currently required in international law. The TRIPS Agreement requires member states to protect clinical data, but there is no obligation to grant any period of monopoly or exclusivity in the use of these data.

When a second entrant or generic manufacturer applies to register and sell a generic version of a previously registered medicine, the manufacturer has to provide data showing that its product is bioequivalent to the original registration. The drug regulatory agency already has the necessary clinical data for safety and efficacy, submitted by the originator, and must only assess if the generic version meets bioequivalence standards.

The introduction of data exclusivity prevents drug regulatory agencies from referring to existing clinical data to approve registration of generic versions of a drug by 'locking up' the clinical data for a period of years, shutting down the entry of price-lowering generic competition for the duration. Data exclusivity essentially creates a new system for granting monopolies in order to prevent generic competition.

Generic manufacturers are forced to wait for the 'data monopoly' period to end, even if the drug is unpatented, and even when a compulsory licence is issued to override a patent. The only way a generic manufacturer can get a drug registered without access to existing clinical data is to repeat the clinical trials. However, duplicating clinical trials is not only extremely costly but also unethical, since safety and efficacy has technically already been established, rendering further clinical trials medically unnecessary.

Many experts and UN agencies, including the World Health Organisation (WHO), UN Development Programme (UNDP) and Joint UN Programme on HIV/AIDS (UNAIDS), have recommended that developing countries do not incorporate data exclusivity in their national laws.

What the US wants: The USTR is currently proposing at least five years of data exclusivity for new chemical entities and at least three years of data exclusivity for drugs containing an already approved active ingredient.

Moreover, the placeholder text calling for data exclusivity for 'biologic' medicines in the TPPA is especially alarming. Pharmaceutical firms are lobbying for the data exclusivity period for biologics to be set at a minimum of 12 years. Because biologics are structured differently than traditional chemical medicines, second-entrant 'generic' biologics are called 'biosimilars' or 'follow-on biologics', and require a different regulatory approval process. This would be the first time the US has included a demand on biologics in a trade agreement, and if incorporated in the TPPA, it would considerably delay the market entry of biosimilars.

It is unclear if the US will renege on the public health safeguards specified in the May 10 Agreement, where exceptions were allowed in order to ensure governments could still effectively implement public health safeguards, including compulsory licences, caps and concurrent periods of exclusivity (vs. effectively longer 'consecutive' periods of exclusivity).

Impact on access to medicines: Data exclusivity can delay the registration of generic or biosimilar versions of a medicine for many years. Some of the newest breakthrough medicines are biologics sold at extremely high prices. The introduction of data exclusivity for biologics will delay the introduction of affordable versions of these medications. The need for low-cost biosimilar alternatives to highly expensive life-saving drugs, including pegylated interferon to treat Hepatitis C and herceptin to treat breast cancer, is acute.

Some members of the US Congress have expressed formal opposition to the inclusion of any data exclusivity relating to biologics in the TPPA. In fact, the US itself is considering reducing its current data exclusivity provision for biologics from 12 to seven years, in order to reduce the cost of medicines. In addition, the Federal Trade Commission (FTC) has even recommended eliminating data exclusivity for biologics in the US.

4) Requesting patent term extensions: the US is seeking to keep generic competitors out of the market, for longer

Existing flexibility: The TRIPS Agreement requires patents to last 20 years, but imposes no additional provisions to extend monopoly rights further.

What the US wants: The US's proposed terms in the TPPA would allow brandname pharmaceutical companies to lengthen this period by requiring countries to grant patent extensions of at least five years to compensate for administrative delays in the regulatory or patent approval process. Even though the May 10 Agreement recognised the harmful impact of patent term extensions on access to medicines, and made them voluntary/optional for countries negotiating trade agreements with the US, the US is demanding that patent term extensions in the TPPA be mandatory.

Impact on access to medicines: The extra years added to the patent are extra years in which the patent holder can maintain a monopoly position and continue to charge artificially high prices for the drug, free from generic competition. Patent term extensions further delay the entry of generic medicines. Both the patent office and the drug regulatory authority have crucial roles to play in examining thousands of patent applications and making sure that registered medicines are safe and of good quality. Based on the provision that the US is proposing, the time taken to process patent and regulatory applications in developing countries could extend patent monopolies unduly.

5) Requesting patent linkage: the US is seeking to turn drug regulatory authorities into 'patent police'

Existing flexibility: Patent linkage is not only absent from international law, but is not even permitted in many developed countries. For example, most countries in Europe do not impose linkage between patent status and drug registration.

A drug's patent status and its registration status – its approval to market the drug in a particular country – are separate, each handled by separate government agencies with specific areas of competency. Patent offices assess whether a drug is innovative and novel enough to be patented, and national drug regulatory authorities assess whether a drug is of a high quality – safe and effective enough to be registered for use by the population they are responsible for.

Patent linkage is a 'TRIPS-plus' provision that forces drug regulatory authorities to assess whether a generic drug could potentially infringe existing patents before approving its registration, but drug regulators are simply not equipped to evaluate patent validity; furthermore, it is up to the patent owner itself to identify and pursue potential patent infringements through the judiciary, a practice which ensures that the validity of a patent can be publicly questioned and held up to scrutiny before it is enforced.

What the US wants: The USTR has proposed that patent linkage be required of TPPA countries, imposing more restrictive conditions for the registration of generic medicines in low-income nations than are found in Europe, and creating an important new and burdensome role for national regulatory authorities.

With this demand, the USTR is reneging on the May 10 Agreement, which made patent linkage optional for countries negotiating trade agreements with the US.

Impact on access to medicines: Patent linkage provisions delay the market entry of generic medications. By requiring drug regulatory authorities to take on the responsibility of policing patents, this aggressive TRIPS-plus provision hinders generic drug registration while circumventing patent dispute processes between the patent holder and the patent authorities.

6) Imposing new forms of IP enforcement: the US wants to allow customs officials to seize shipments of drugs on mere suspicion of IP infringement and to delay generic competition through threats of increased damages

Existing flexibility: The TRIPS Agreement allows for considerable flexibility in designing national mechanisms of IP enforcement and permits exclusion of border measures on patented products.

If pharmaceutical products are considered to be infringing trademarks, the TRIPS Agreement only requires governments to ensure customs officials can seize drugs if they are the product of wilful and commercial-scale actions (e.g., drugs that misrepresent their source and may have been purposefully adulterated and are dangerous for public health). Also, governments can limit damages or the availability of injunctions (which might otherwise prohibit a generic company from marketing a drug) in the interest of public health.

What the US wants: The US's proposed terms would eliminate some of these flexibilities. The US is demanding that TPPA countries implement and apply stronger enforcement measures than required by international law.

The US is requesting that TPPA countries grant customs officials the ex-officio right to detain shipments of medicines at the border, even for generic medicines in transit to developing countries, when they are suspected of civil, non-counterfeiting trademark infringement. But customs officials are not equipped to apply trademark law's complex multi-factor tests. The US proposal conflates pure commercial trademark disputes and criminal offences, such as production of counterfeit, falsified or substandard medicines. The result is a policy that could harm, rather than help, public health, by delaying legitimate medicines en route to people who need them in developing countries.

The US also seeks to require mandatory injunctions for alleged IP violations. This runs counter to provisions in TRIPS that allow for the possibility of judicially authorised licences and royalty payments as damages. Furthermore, the US is requesting TPPA countries to mandate that judicial authorities consider valuing damages based on 'the suggested retail price or other legitimate measure of value submitted by the right holder' in cases of infringement of intellectual property rights, a mechanism that strongly favours the rights holder and increases damage amounts. Each country should have the flexibility to individually determine the appropriate remedy and measure for damages for IP infringement.

Impact on access to medicines: Increased enforcement of IP laws has already been used to limit legitimate trade in generic medicines between developing countries. Extending IP enforcement rules beyond the enforcement measures required in the TRIPS Agreement, and without safeguards against abuse, widens opportunities to disrupt legitimate trade in generic medicines. Customs and border officials often do not have the necessary expertise to make accurate assessments with regard to intellectual property disputes, yet will be granted the power to seize medicines on a mere suspicion or allegation of IP infringement. Unwarranted interception of legitimate in-transit pharmaceutical supplies can undermine legitimate trade in generic medicines. If TPPA countries agree to the US's proposal for valuing damages, their judiciaries will have their hands tied and will no longer be able to balance intellectual property rights with public health.

This article has primarily addressed the US government demands on patents and intellectual property, but the TPPA contains other chapters that, if accepted, would also negatively affect access to medicines in developing countries. The following two provisions, from the pharmaceutical pricing and investment chapters, could have a detrimental effect on access to medicines.

7) Pharmaceutical pricing chapter: the US is seeking to assist pharmaceutical companies in locking in high prices

According to the leaked text, the USTR's proposed terms would force government pharmaceutical reimbursement or price control programmes that exist in some countries to reflect the 'market value' of drugs, thereby increasing the purchase price and restricting the capacity of governments to negotiate discounts or price reductions.

The US proposal for the TPPA mandates that governments buy medicines at much higher fixed prices, allows pharmaceutical companies to be part of the decision-making process, and even allows pharmaceutical firms to challenge government decisions. The TPPA would be the first trade agreement where the US is known to be proposing a standard that would restrict the operation of non-discriminatory domestic pharmaceutical price policies in developing countries. And the US is proposing these measures in an agreement it describes as having 'global' and 'gold standard' ambitions.

8) Investment chapter: the US wants to allow pharmaceutical companies to sue governments and limit their ability to effectively set medicine prices

The leaked TPPA investment chapter contains provisions that would give private corporations the right to sue governments if the regulatory environment negatively affects their 'investments', including expected profits.

The definition given to 'investment' in the TPPA encompasses intangible investments, including intellectual property. Granting companies these rights could therefore undermine TPPA governments' ability to issue regulations to protect public health and promote access to medicines, and expose them to lawsuits from corporations that claim their IP rights are being infringed upon by government action.

This could happen if, for example, a government decided to regulate drug prices. A company could then claim that the government's action negatively impacts its 'investment' in the country.

To resolve disputes, the TPPA proposal creates extra-judicial international investor-state tribunals that bypass national judicial systems and even WTO-based dispute settlement mechanisms, that can override national laws and issue penalties for failure to comply with their rulings, and that make decisions via closed-door processes that are usually unappealable. ◆

The above is extracted from 'Trading Away Health: How the US's Intellectual Property Demands for the Trans-Pacific Partnership Agreement Threaten Access to Medicines', an Issue Brief produced by Médecins Sans Frontières' Access Campaign (August 2012). The full text of the briefing is available on the Campaign's website msfaccess.org. Médecins Sans Frontières is an international humanitarian aid organisation that provides emergency medical assistance to populations in danger in more than 60 countries.

The new chessboard

In the following piece, the former chief negotiator for Chile in the TPPA negotiations provides a Latin American perspective on the talks and stresses the need to conduct negotiations 'carefully and firmly to protect the national and regional interest'.

Rodrigo Contreras

THE Trans-Pacific Partnership Agreement (TPPA) is one of the most important agreements being negotiated in the world today. Due to the deeper and more extensive treatment of the issues under negotiation and the number and importance of the countries involved, the TPPA transcends its geographical scope and will set the tone for future trade negotiations.

The TPPA could restrict Latin American member states' development options in education, among other areas.

Trade policy in several countries in Latin America coincides with the objectives of the TPPA in general terms, but that does not mean that we should sign this new agreement in any form. The reality and the goals of the Latin American countries are different from those of the Anglo-Saxon countries and the participating Asian countries.

Topics of specific interest to the region – protection of biological and cultural diversity, flexibility to design and implement development policies, access to medicines and educational materials without excessive restrictions, and intellectual property issues – should be negotiated carefully and firmly to protect the national and regional interest.

The votes of each country have equal worth in the TPPA negotiations. The Latin American countries make up a quarter of the countries and can influence the outcome.

Our countries need the flexibility that has been recognised by multilateral trade negotiations on issues such as intellectual property, environmental protection, capital controls, and the proper balance between the rights of private investors and the state.

This requires a strong negotiating position in the face of claims and pressures of the richest countries in the TPPA and their companies.

The countries of the region have a long way to go to advance access to knowledge, quality education, health care coverage, and the strengthening of their economies (especially their financial and exchange rate systems).

We must avoid limits on access to knowledge available on the Internet and not exacerbate intellectual property protection for the downloading of online content.

Nor should we accept the excessive expansion of copyright protection terms for books, movies or music, which would limit their availability in libraries and schools, and would make them more expensive for lower-income people.

The extension of drug patent protections beyond the current terms, or the restriction of challenges to frivolous patent applications, would delay the availability of generic drugs and increase the cost of medicines. Public health budgets and access to health services for the most vulnerable would be affected in our countries.

While we might be satisfied with the stability of our economies in the region, all countries, including high-income ones, are exposed to the effects of any economic crisis. The International Monetary Fund has reiterated that one of the main challenges for Latin America is to restore the space for applying financial safeguards. In these circumstances it does not make sense to further liberalise capital flows, depriving us of legitimate tools to safeguard financial stability.

The TPPA offers us the opportunity to achieve a balanced agreement that reflects the interests and needs of the participating Latin American countries. Our countries have similar objectives, and in some areas we share interests with Asian countries, allowing more room for negotiation with the largest countries in the TPPA.

The TPPA is a great idea under development. We should transform it into real opportunity for our economies. It is critical to reject the imposition of a model designed according to realities of high-income countries, which are very different from the other participating countries.

Otherwise, this agreement will become a threat for our countries: it will restrict our development options in health and education, in biological and cultural diversity, and in the design of public policies and the transformation of our economies. It will also generate pressures from increasingly active social movements, who are not willing to grant a pass to governments that accept an outcome of the TPPA negotiations that limits possibilities to increase the prosperity and well-being of our countries. ◆

Rodrigo Contreras was Chile's chief negotiator for the TPPA and Director of Multilateral Economic Affairs and Bilateral Economic Affairs at the Chilean Foreign Ministry between 2007 and 2012. He is currently an independent consultant on international trade issues. The above article has been translated from the Spanish. The original article appeared in the Peruvian magazine Caretas.

US arms industry would lose big from Egypt aid cut-off

The refusal of the US, as the main arms supplier, to cut off military aid to the Egyptian armed forces in the face of their coup against a lawfully elected government has drawn widespread outrage. What is often ignored is that there are powerful forces opposed to such an aid cut-off. The following articles focus on two such groups.

Thalif Deen

THE United States, which has refused to cut off its hefty $1.3 billion in annual military aid to Egypt, continues to argue that depriving arms to the 438,500-strong security forces will only 'destabilise' the crisis-ridden country.

There is perhaps a more significant – but undisclosed – reason for sustaining military aid flows to Egypt: protecting US defence contractors.

Virtually all – or an overwhelming proportion – of the $1.3 billion granted under Foreign Military Financing (FMF) is ploughed back into the US economy, specifically into the US defence industry.

William Hartung, director of the Arms and Security Project at the Centre for International Policy (CIP), told Inter Press Service (IPS) US President Barack Obama's refusal to cut off military aid to Egypt while US weapons are being used to murder protesters is 'unconscionable'.

'The reasons given for continuing this aid no longer hold up to scrutiny. It is not a source of stability, as the Obama administration claims,' he said.

And it has certainly not given the United States any leverage to moderate the behaviour of the regime, said Hartung, who has written extensively on the politics and economics of the US defence industry.

'One thing the aid has done and continues to do is to enrich US defence contractors like Lockheed and General Dynamics,' he added.

With the exception of a tank factory built with US assistance, he pointed out, the vast bulk of the roughly $40 billion in US military aid to Egypt over the past 30 years has gone straight into the coffers of US weapons makers.

The sophisticated weapons systems already purchased by Egypt – with much more still in the pipeline – include F-16 fighter planes, E2-C Hawkeye reconnaissance aircraft, Apache and Sikorsky helicopters, C-130 transports, Sidewinder, Sparrow, Improved-Hawk and Hellfire missiles, M1A1 Abrams and M60A1 battle tanks, and M113A2 armoured personnel carriers.

All of these weapons have either been delivered – or are in the process of being delivered – by some of the major US defence contractors, including Lockheed Martin, Northrop Grumman, General Electric, Boeing, Sikorsky, General Dynamics, United Defence and Raytheon, among others.

Besides the $1.3 billion in FMF outright grants, Egypt also receives $1.9 million annually for International Military Education and Training (IMET) and about $250,000 in Economic Support Funds (ESF).

Egypt also receives, at minimum cost as delivery charges, second-hand US equipment under Excess Defence Articles (EDA) worth hundreds of millions of dollars annually.

The US defence contractor General Dynamics is involved in helping Egypt co-produce the M1A1 Abrams battle tank, described as 'one of the cornerstones of US military assistance to Egypt'.

Additionally, there is an ongoing programme to continue upgrading equipment in the Egyptian arsenal and follow-on support and maintenance contracts for the upkeep of US equipment.

In a piece published in Common Dreams online, Jacob Chamberlain, a staff writer, quotes a report from National Public Radio (NPR) as saying that every year, the US Congress appropriates more than $1 billion in military aid to Egypt.

'But that money never gets to Egypt. It goes to the Federal Reserve Bank of New York, then to a trust fund at the Treasury and, finally, out to US military contractors that make the tanks and fighter jets that ultimately get sent to Egypt.'

So far, the Obama administration has penalised Egypt by suspending the delivery of four F-16 fighter planes (the Egyptian air force already has 143 F-16s, with the last order of 20 dating back to March 2010 still in the pipeline) and the cancellation of joint military exercises with Egypt scheduled for September.

The Obama administration has also refused to describe the military takeover of a civilian government as a 'coup' because under US legislation such a designation would automatically generate a cut-off of US aid.

As of 16 August, the death toll from the military crackdown has been estimated at between 500 and 1,000, with nearly 4,000 injured.

Pieter Wezeman, a senior researcher with the Arms Transfers Programme at the Stockholm International Peace Research Institute (SIPRI), told IPS, 'It is correct that the US military industry benefits from US military aid to Egypt.

'And it is correct that if the United States would stop altogether with supplying such aid to Egypt, that would have some effect on the turnover of the US arms industry,' he added.

However, he said, 'I am doubtful if arms industry lobbying [or] concern for the arms industry is a reason of any significance for the US to not halt all FMF aid to Egypt.'

There are several reasons, he said,

including a temporary stop which would have only a minor effect.

'After all, some of the equipment that has been contracted for can be produced and stored by the US government – which is, after all, the entity that signed the contracts with the US industry – until the situation in Egypt changes.'

Presumably, funding not earmarked can be withheld and would benefit the industry later, he added.

Moreover, said Wezeman, the US has embargoed major buyers of US arms and cut military aid before, despite the obvious costs for the industry.

The best examples are Iran in 1979 – although that was arguably as well a decision by Iran at that time – Pakistan in the early 1990s and India in 1963.

Citing other examples, he said, in the case of Saudi Arabia and the United Arab Emirates (UAE), the US has foregone some major deals due to the fact that they did not want to supply certain advanced equipment. For example, it is generally assumed that France clinched a major deal for combat aircraft in the late 1990s because it included 300-km-range cruise missiles which the US had refused.

Military aid to countries like Greece has diminished from high in the 1980s and 1990s to a very low level now.

Wezeman said although $1.3 billion a year is a lot of money, it is relatively small compared to the current cutbacks in US military spending and the sequestration issue, which will have a much bigger effect on the US arms industry. – *IPS* ◆

Israel and AIPAC keep up efforts to save aid for Egyptian military

Alex Kane

ISRAEL is working hard to save Western aid to Egypt. The Israeli government's lobbying, buttressed by the American Israel Public Affairs Committee (AIPAC), comes as reports emerge about the Obama administration potentially cutting off some aid to the Egyptian armed forces because of its brutal crackdown on the Muslim Brotherhood in recent weeks.

On 19 August, the *New York Times*' Jodi Rudoren reported that Israel was planning to 'intensify' its efforts to persuade Europe and the US to keep up Western aid to Egypt.

The Israeli effort is not being done in the open – open lobbying by Israel for the Egyptian military would not be viewed positively in Egypt. But an anonymous Israeli official told Rudoren that the Israeli perspective is all about 'putting Egypt back on track at whatever cost. First, save what you can, and then deal with democracy and freedom and so on'. The official added: 'At this point, it's army or anarchy.'

In Washington, AIPAC is following the Israeli government's lead. As *Foreign Policy*'s John Hudson reported: 'AIPAC, which was credited with helping kill an amendment to cut Egyptian aid in July, is now operating behind the scenes in private meetings with lawmakers to keep alive Cairo's funding, congressional aides from both political parties said.'

The $1.3 billion in American aid to Egypt has long been the price paid to guarantee that the Camp David peace treaty with Israel holds together. But today there's little chance, even without US aid to Egypt, that the peace treaty would unravel or that war would break out between the two countries. Instead, Israel may be keeping up efforts to ensure aid because the country wants an effective military crackdown on Sinai Islamists that threaten both Egypt's generals and Israel. Additionally, as former intelligence officer Paul Pillar suggests in *The National Interest*, 'the Israeli Right has to be discomfited by any thought of the United States using leverage based on a major aid relationship in that part of the world to get the recipient to change destructive policies.'

The efforts to make sure that there's a continued flow of aid come as governments around the world debate their response to an Egyptian government crackdown that has killed hundreds of Islamists and opponents of the 3 July coup.

As for the Obama administration, its response remains unclear. While the president announced in the week of 12 August that the US would suspend joint military exercises with the Egyptian military, the much more important question of US military aid to Egypt looms large.

The Daily Beast's Josh Rogin reported on 19 August that the Obama administration had secretly suspended military aid to Egypt. Rogin wrote: 'In the latest example of its poorly understood Egypt policy, the Obama administration has decided to temporarily suspend the disbursement of most direct military aid, the delivery of weapons to the Egyptian military, and some forms of economic aid to the Egyptian government while it conducts a broad review of the relationship. The administration won't publicly acknowledge all aspects of the aid suspension and maintains its rhetorical line that no official coup determination has been made, but behind the scenes, extensive measures to treat the military takeover of Egypt last month as a coup are being implemented on a temporary basis.'

The White House denied the report on 20 August. As the *Washington Post*'s Anne Gearan explained: 'The Obama administration is in the midst of a case-by-case review of aid programmes for Egypt to see whether any should be suspended in light of the actions of the military-backed government. So says the administration, which insists the review does not equal a hold or a suspension of aid – yet.'

But even if Rogin's report is true, the suspension of aid would be a symbolic move. The vast majority of the $1.3 billion in annual military aid has already been disbursed. It's only $585 million in aid that's at stake.

So the real question is whether the full package of US military aid will be disbursed next year. Given the history of US policy, and Israel's efforts to ensure the aid keeps flowing, it's likely that military aid will continue. ◆

Alex Kane is an assistant editor for Mondoweiss (mondoweiss.net), from which this article is reproduced, and the World editor for AlterNet.

Colombia: Killing peasant farmers for their land

The root of Colombia's conflict lies in land ownership and the state's penchant for selling off peasant land to multinational mining corporations is what is fuelling Latin America's longest civil war, says *Ellie Mae O'Hagan*.

ON a hot, dusty morning in July, I found myself rattling down a road in the beautiful Colombian countryside. I was there as part of a delegation with the international non-governmental organisation Justice for Colombia, crashing through virtually unusable roads, over gaping potholes and dangerously rusted bridges – testament to the government's unwillingness to invest in its countryside regions, which are inhabited mostly by peasants.

At about 7am, the bus stopped and we disembarked, unaware of what lay ahead. But waiting for us were at least 60 campesinos – the Spanish word for peasant farmers – lining either side of the road. They were standing upright, left hands aloft, right hands behind their backs, shouting demands for justice in a single, unified voice. We walked up the road in the morning sunlight, pausing occasionally to shake their hands and echo their cries of 'Viva!'

Justice for Colombia

Campesinos in Catatumbo protest government evictions. The region of Catatumbo is at the frontline of Colombia's civil war, which is rooted in inequalities in land ownership.

This is the region of Catatumbo, and the campesinos are its poorest residents. At the moment, Catatumbo is at the frontline of Colombia's raging civil war – a war that hasn't abated, no matter what the country's tourist board might tell you.

A few weeks before our arrival, security forces turned up and opened fire on a campesino protest, killing four and wounding 50. The type of bullets the authorities use mean that limbs often explode and have to be amputated. The Colombian government is currently promising an investigation into human rights abuses in Catatumbo, but state repression has yet to deter the region's residents. They are genuinely the hardest people I've ever met. Despite the threat of security forces returning to rob them of life and limb, during our visit thousands of campesinos were blockading the road to the region's capital, taking turns to make sure that no vehicle could get through.

When it comes to the Colombian civil war, most people imagine a dispute between rival criminal gangs, each vying to stuff the most cocaine into the noses of London bankers and Miami beach-party DJs. However, while coke plays its part in the conflict, it is by no means the main issue. The root of the country's problems actually lies in land ownership and the state's penchant for selling off peasant land to multinational companies, which then mine it for resources like oil and gold. Unfortunately for these corporations – which already own up to 75% of the land in some regions – the campesinos tend to be fairly reluctant to move from the turf they've spent decades making their home. So what's the solution? Simple – chuck the campesinos off.

This policy is at least part of the reason why Colombia is currently home to five million displaced people, which accounts for over 10% of its entire population and is the highest number of any country in the world. And these people aren't always expelled peacefully: if the army doesn't scare them away (when I was in Colombia, I met campesinos who told me that the army was intimidating them by shitting in the water supply), right-wing paramilitaries have a tendency to turn up and just massacre everybody instead. In their quest to secure land to grow narcotics on and smuggle munitions across, these paramilitaries basically act as extrajudicial death squads.

According to a 2012 UN report, close to 20,000 people have been disappeared in Colombia by right-wing paramilitaries and the army is currently being investigated for 4,716 extrajudicial executions of civilians. Unsurprisingly, then, the demands of Catatumbo's campesinos revolve mainly around protecting their land. They are calling for a Peasant Farmer Reserve Zone, which would give them enhanced land rights, like those of many indigenous communities in Latin America.

Colombia is currently home to five million displaced people, which accounts for over 10% of its population and is the highest number of any country in the world. Picture shows a settlement outside the city of Cartagena built by displaced families.

According to ASCAMCAT, a Colombian agricultural union, the proposed Peasant Farmer Reserve Zone would provide small-scale farming opportunities to over 80,000 campesinos. It's a common misconception that the campesinos are simply poor people who can't afford to live any other way – campesino life is rich in culture and heritage, and many see their way of living, difficult though it is, as a valued tradition that deserves to be protected.

The campesinos also want the right to farm alternative crops to illegal coca, from which cocaine is made. At the moment, it's impossible to make a living by farming food products because foreign imports are so cheap and because the total lack of decent roads or infrastructure makes transport costs too high. Campesino farmers are becoming increasingly reliant on coca, only to have the army burn down all of their crops, pushing them further into poverty.

Similar scenes to those in Catatumbo are playing out across Colombia, but the region has lately become something of a tinderbox because of the extent of the resistance there. So it comes as no surprise that Catatumbo's campesinos have made an enemy in the government as a result, which insists that the protests have been infiltrated by the FARC, a left-wing peasant insurgency that has been fighting the Colombian government and its right-wing paramilitary proxies for the best part of 50 years. The government calls the campesinos terrorists, but when I was in Catatumbo, I saw no evidence of that. The campesinos seemed like ordinary people, many of them teenagers, who claim to have never fired a single shot at the authorities. As one campesino put it, 'If we were terrorists with access to weaponry, why would we fight the army with sticks and stones?'

Colombian paramilitary members. According to a 2012 UN report, close to 20,000 people have been disappeared in Colombia by right-wing paramilitaries.

It's a compelling argument, and one the government doesn't want people to hear. The day before we set off for Catatumbo, Colombia's ministry of defence tried to intimidate us into changing our minds. We received several emails and were invited to a personal meeting, where we were warned that our safety among the campesinos couldn't be guaranteed.

But that was complete bullshit – the biggest threat to our safety was the soaring temperatures. Our interactions with the campesinos consisted mainly of eating lunch together and salsa dancing – hardly the stuff of Jabhat al-Nusra. Nevertheless, the government continues its smears; the leader of the campesino union, Cesar Jerez, is regularly portrayed in the Colombian press as some kind of Latino bin Laden. Anyone with an interest in human rights should be keeping an eye on what happens to him in the coming months.

Eventually the afternoon wore on, the temperatures cooled and the campesinos started to return to work. As we bounced along the roads home, we got word that the campesinos were preparing to lift the road blockades in response to the government agreeing to enter into negotiations. That development doesn't seem to have stopped the conflict, though – a few days later, the police returned to the region and committed further violence, leading to the hospitalisation of a journalist from the Colombian alternative press.

Waiting at the airport to fly back to Colombia's capital, I saw a billboard from the country's tourist board that, after spending time in Catatumbo, seemed almost mocking in its message: 'Colombia: the only risk is wanting to stay.' ◆

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The moment the US ended Iran's brief experiment in democracy

August marks the 60th anniversary of the overthrow of Iran's democratically elected Prime Minister Mohammad Mossadegh by a CIA and Western-backed coup which restored the absolutist rule of the Shah. *Robert Scheer* explains the motives behind the coup and its far-reaching implications.

SIXTY years ago, on 19 August 1953, the United States, in collaboration with Britain, successfully staged a coup in Iran to overthrow democratically elected Prime Minister Mohammad Mossadegh that a newly declassified CIA document reveals was designed to preserve the control of Western companies over Iran's rich oil fields.

The US government at the time of the coup easily had manipulated Western media into denigrating Mossadegh as intemperate, unstable and an otherwise unreliable ally in the Cold War, but the real motivation for hijacking Iran's history was Mossadegh's move to nationalise Western-controlled oil assets in Iran. According to the document, part of an internal CIA report:

'The target of this policy of desperation, Mohammad Mosadeq [sic], was neither a madman nor an emotional bundle of senility as he was so often pictured in the foreign press; however, he had become so committed to the ideals of nationalism that he did things that could not have conceivably helped his people even in the best and most altruistic of worlds. In refusing to bargain – except on his own uncompromising terms – with the Anglo-Iranian Oil Company, he was in fact defying the professional politicians of the British government. These leaders believed, with good reason, that cheap oil for Britain and high profits for the company were vital to their national interests.'

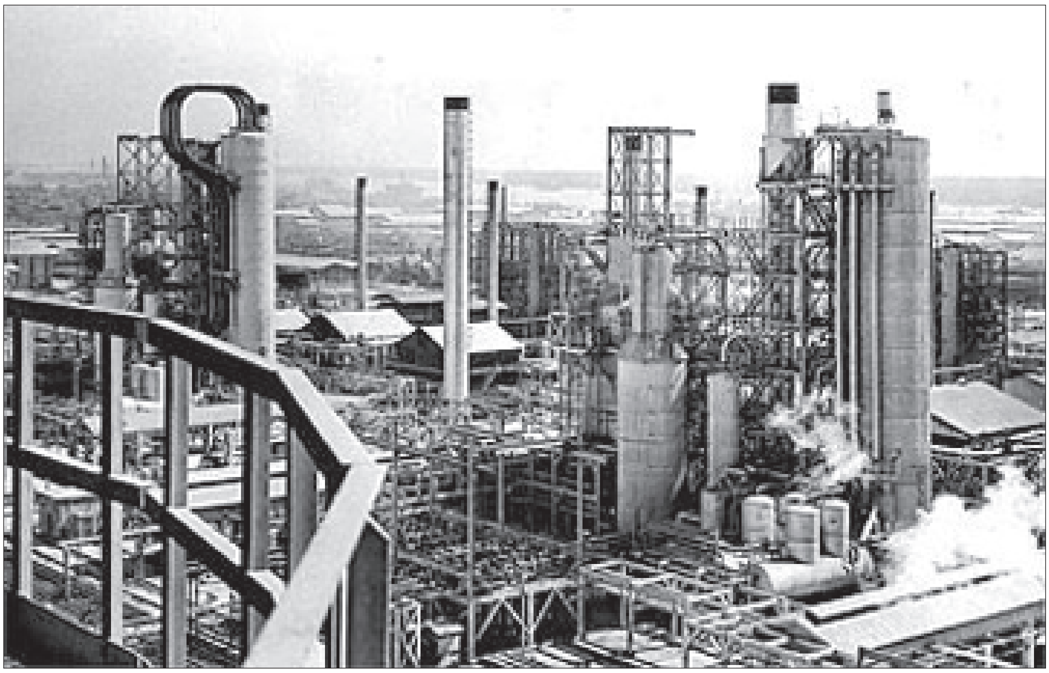
There you have it, the smoking-gun declaration of the true intent to preserve high profits and cheap oil that cuts through all of the official propaganda justifying not only this sorry attempt to prevent Iranian nationalists from gaining control over their prized resources but subsequent blood-for-oil adventures in Iraq and Kuwait. The assumption is that 'the best and most altruistic of worlds' is one that accommodates the demands of rapacious capitalism as represented by Western oil companies.

A street scene from the August 1953 US-led coup in Iran which ousted democratically elected Prime Minister Mohammad Mossadegh.

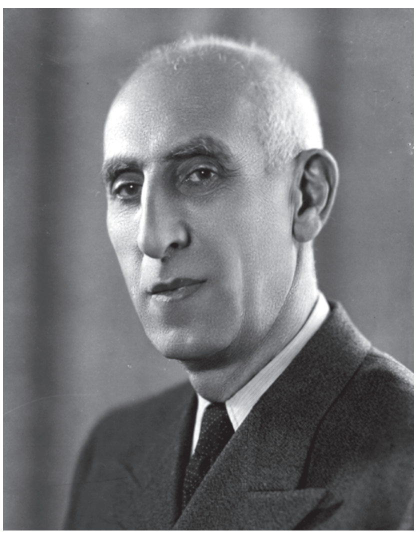
Tragically, the coup that overthrew Mossadegh also crushed Iran's brief experiment in democracy and ushered in six decades of brutal dictatorship followed by religious oppression and regional instability. If Iran is a problem, as the United States persistently and loudly insists, it is a problem of our making. Mossadegh, who earned a doctorate in law from Neuchatel University in Switzerland, was not an enemy of the American people; he was an Iranian nationalist who, as the CIA's own internal report concedes, was preoccupied with the well-being of his people as opposed to the profitability of Western oil interests.

The CIA report derides the Western media's acceptance at the time of the coup of the demonisation of all actors on the world stage that fail to follow the approved script provided by the US government. As the report notes, the 'complete secrecy about the operation', breached only by leaked information, made it 'relatively easy for journalists to reconstruct the coup in varied but generally inaccurate accounts'.

Without conceding responsibility for misleading the media, the report says, 'The point that the majority of these accounts miss is a key one: the military coup that overthrew Mosadeq [sic] and his National Front cabinet was carried out under CIA direction as an act of US foreign policy, conceived and approved at the highest levels of government. It was not an



File picture of a refinery built by Britain's Anglo-Iranian Oil Company in Abadan, Iran. A newly declassified CIA document reveals that the 1953 coup was designed to preserve the control of Western companies over Iran's rich oil fields.



Prime Minister Mohammad Mossadegh was an Iranian nationalist who, as the CIA's own report concedes, was preoccupied with the well-being of his people as opposed to the profitability of Western oil interests.

Veteran CIA operative Kermit Roosevelt played the leading role in planning and executing the Iran coup.

aggressively simplistic solution, clandestinely arrived at, but was instead an official admission that normal, rational methods of international communication and commerce had failed. TPAJAX [the operation's codename] was entered into as a last resort.'

Parts of the formerly top-secret report, an internal CIA study from the 1970s titled 'The Battle for Iran', which detailed the CIA-directed plot, have been revealed previously. But the section disclosed on 19 August in response to a Freedom of Information Act lawsuit brought by the National Security Archive is, as the archive's research director Malcolm Byrne writes in *Foreign Policy* magazine, the first time the CIA admits to 'using propaganda to undermine Mossadegh politically, inducing the shah to cooperate, bribing members of parliament, organising the security forces, and ginning up public demonstrations'.

All of these actions were described in great detail by veteran CIA operative Kermit Roosevelt in a lengthy interview with me for the *Los Angeles Times* in 1979. Roosevelt is confirmed in the newly released documents as having the leading role in planning and executing the coup. In the interview, Roosevelt revealed his part for the first time, but instead of celebrating the success of the venture, he cautioned that it had set a terrible example.

As I summarised the conversation in the story that appeared on 29 March 1979: 'Roosevelt said that the success of the operation in Iran – called Project AJAX by the CIA – so inspired then-Secretary of State John Foster Dulles that Dulles wanted to duplicate it in the Congo, Guatemala, Indonesia and Egypt, where he wanted to overthrow President Gamal Abdel Nasser. Roosevelt said that he resisted these efforts and finally resigned from the CIA because of them.'

Roosevelt, as he recounted in his memoir published five months after our interview, came away from the coup he engineered with serious concerns about the efficacy of such ventures. But unfortunately it became the model in Vietnam, Guatemala, Cuba, Afghanistan, Nicaragua and other countries, where the full official record is apparently judged still too embarrassing for our government to declassify. ◆

Robert Scheer is Editor in Chief of Truthdig (www.truthdig.com), on which this article was originally published.

Killing in the name of Buddhism

Tom Fawthrop investigates what is behind Buddhist monks inciting attacks on Muslim communities in Myanmar.

IT was not so long ago that Myanmarese Buddhist monks dressed in saffron robes organised brave protests and peaceful processions against the brutal military junta led by General Than Shwe. It was dubbed the Saffron Revolution. In 2007 their Gandhian non-violent resistance was watched with awe and commanded the respect of millions around the globe.

These images etched in our collective memory are hard to square with an ugly new reality in Myanmar – the sight of Buddhist gangs setting Muslim communities ablaze. Some monks have played a vanguard role in instigating this anti-Muslim campaign which has seen acts of collective arson and racist brutality.

A man walking amid the debris of buildings destroyed during a bout of anti-Muslim violence in the central Myanmar town of Meikhtila in March. Buddhism in Myanmar has been divided by the anti-Muslim campaign.

How can the same religion known throughout the world for its commitment to peace, meditation and reflection engage in hate-filled sermons against the Muslim minority?

Muslim-owned shops and homes in Lashio in Shan state were the most recent victims of a Buddhist motorbike gang in June. Shan researcher Sai Latt commented that 'the government and the police are not doing anything at all to clamp down on extremist hate propaganda against Muslims'.

The killings of Muslim Rohingyas in western Rakhine state that started the violence in 2012 have spread this year to the wider Muslim population. In March, systemic arson razed to the ground 1,300 Muslim-owned houses and shops in the central town of Meikhtila. Armed Buddhist gangs later brought terror to 14 peaceful Muslim communities in towns and villages in central Myanmar. Acting with total impunity, they moved south to Pegu division, unleashing another wave of havoc in Okkan district.

Is the violence the inevitable result of reformist changes in the country that have brought more freedom of expression in Myanmar with the emergence of a quasi-civilian government after 50 years of brutal military repression?

Certainly that is what presidential spokesman and deputy minister of information Ye Htut would have us believe. 'We cannot avoid this time of chaos,' he told AFP news agency. He insisted the wave of hate speech and violence targeting Muslims was the 'ugly by-product' of new freedoms allowed by the reformist government.

Whereas Ye Htut claims the government 'cannot control the chaos', Sai Latt, a PhD candidate at Simon Fraser University in Canada, claims that there is a clearly orchestrated pattern to these anti-Muslim attacks.

Latt says the pattern is clear: 'Prior to the riots, anti-Muslim literature arrives in a town, followed by monks preaching "969" sermons in the vicinity. On the day when violence breaks out, truckloads of strangers including monks have appeared on the scene. In each case an incident takes place that triggers the anger of the Buddhists.'

Shortly after that, all hell breaks loose as angry mobs cry 'Kill the Muslims', attack mosques and set fire to their homes while carefully avoiding damage to nearby Buddhist-owned shops and houses.

According to Sai Latt, 'there is never any preventive action. Whatever happened or however things turned out, the president's spokesman, Ye Htut, will blame Muslims and cover up the incidents on his Facebook page'.

Originally the numerals '969' symbolise the virtues of the Buddha, Buddhist practices and the Buddhist community. But now '969' has been hijacked as a symbol of anti-Muslim agitation.

Lack of effective response

The central town of Meikhtila bears the ugly legacy of recent anti-Muslim violence. Large sections of the town have been reduced to rubble and a few broken walls – all that remains of what used to be a thriving Muslim community of almost 1,300 houses, shops and mosques. This writer found compelling evidence of state complicity among the eyewitness accounts of the actions of residents during the four days of mob attacks on the Muslim community which resulted in an official count of 42 deaths although other reports indicated more than a hundred Muslim victims and a few Buddhists.

The government of President Thein Sein, so active in its efforts to assure Western audiences that the new Myanmar will never return to the dark days of the previous ruling military junta, has so far failed to take any concrete action to end the brutal spiral of attacks on Muslim communities.

Thein Sein's periodic appeals for 'an end to communal violence' are less than convincing. He never condemns Buddhist extremism but on the contrary has defended extremist monk U Wirathu as a 'true son of Buddha'.

Bill Davis, former Burma project director for Physicians for Human Rights, and Andrea Gittleman, the group's senior legal adviser, reported that 'in Meikhtila, investigators found that police were complicit in the violence against Muslims ... they marched unarmed Muslims toward an armed civilian mob, then refused to protect them from beating, stoning, and murder; they did not help injured Muslims; and they failed to apprehend perpetrators'.

'The general lack of an effective response from the central government is a monumental failure to protect its citizens from organised and targeted violence,' they said in a report.

UN Special Rapporteur for human rights in Myanmar, Tomas Ojea Quintana, said he received reports of 'state involvement in some of the acts of violence, and of instances where the military, police and other civilian law enforcement forces have been standing by while atrocities have been committed before their very eyes, including by well-organised ultra-nationalist Buddhist mobs'.

Religious conflict or a politically stoked intrigue?

In many parts of the world racial and religious prejudice and bigotry have been manipulated by autocratic rulers to stay in power, or by colonial powers to hang on to their stolen territories.

The 1 July issue of *Time* magazine, which featured a cover photograph of extremist monk U Wirathu, was banned in Myanmar.

Ashin Issariya, one of the monks who led the 2007 Saffron Revolution protests against the previous military government, told this writer, 'Buddhists and Muslims in Myanmar have lived together harmoniously for decades.'

The Irrawaddy, a Myanmarese news service with offices in Chiangmai and Yangon, reported that 'Muslims began arriving in Burma as traders and mercenaries in the 13th century and lived alongside Buddhists in relative peace for centuries. In the 19th century, under the reformist King Mindon, mosques were built and thousands of Muslims served in Burmese infantry and artillery divisions. Mindon even helped build a hostel in Mecca for Burmese Muslims making the pilgrimage or hajj.'

The editor-in-chief of the *Open News* journal, Thiha Saw, in a recent interview explained, 'Overall we have a history of religious harmony in the country. But the anti-Muslim card is the trump card used by the military at critical times. It is an old trick. The Buddhist mobs attacking mosques are outsiders. These so-called Buddhists are often hired from the ranks of the unemployed, and it is alleged they receive training from former military officers.'

A recurring theme from locals is that 'outsiders' are bussed in by trucks and nearly all of them are armed with sticks, swords and machetes. An incident soon happens between a Muslim and a Buddhist that provides the spark and then the gangs swing into action, agitating and enlisting locals to join the ensuing riot. Muslim-owned homes and shops are demolished and, along with them, previous inter-communal and religious harmony.

In Okkan district a monk in robes was at the wheel of a bulldozer engaged in destroying the walls of a mosque. Issariya laughs in disbelief, 'A real monk cannot drive a bulldozer, this is not part of our training.'

Discerning the truth through the fog of propaganda and the chaos is not made any easier when you have both extremist monks like U Wirathu and fake monks carrying out an offensive – the one with inflammatory rhetoric complemented by a fake monk bulldozing a mosque.

The peace activist monk Issariya told this writer, 'This is a well-planned campaign by a group of people who use religious bigotry to further their political ambitions. Certain forces yearn for the return of a military government. General Than Shwe [the supreme leader of the former military junta] is more powerful than President Thein Sein.'

Bitter divisions inside Myanmarese Buddhism

Most of the media coverage, both

domestic and international, has narrowly focused on the anti-Muslim rantings spewed out by U Wirathu from a monastery near Mandalay.

He has claimed that Muslims commit virtually all the rape cases in Myanmar, that their mosques and assets are being secretly financed by the Saudis, and that they plan to eventually take over the whole country.

The Buddha preached calm and contemplation but Wirathu's agenda calls for the opposite. 'Now is not the time for calm,' the 46-year-old monk has declared while denigrating Muslims. 'Now is the time to rise up, to make your blood boil.' He was quoted as saying this in the 1 July issue of *Time* magazine, which featured a cover photograph of the monk with the caption 'The face of Buddhist terror'. That issue was banned inside Myanmar.

Extremist monks led by the publicity-hungry Wirathu are preaching a brand of pure Buddhist nation-state where there is no place for the followers of Islam. Speeches and rallies led by Wirathu, which resemble more a political campaign than a call to enlightenment, have invariably happened in the vicinity of Meikhtila, Okkan and other districts just before the violence there broke out.

Buddhism in Myanmar has been battered and divided by the anti-Muslim campaign. Extremist monks like Wirathu have garnered worldwide attention for their racist views. But Buddhist networks which assert the teachings of the Buddha and the path of peace, religious tolerance and social justice have largely been ignored by both local and international media.

At Meikhtila's Zay Yar Bun monastery, senior monk Udamme Thara said, 'I know more than 1,000 Muslims fleeing from their attackers received sanctuary inside our monasteries. I am sure almost all temples provided safety and saved their lives.'

Ashin Issariya's peace network of 800 monks, meanwhile, provided humanitarian aid to the victims of Meikhtila and organised shipments of rice, clothes and other aid to IDP (internally displaced people) camps for fleeing Muslims.

Buddhist monk Ashin Issariya: 'Buddhists and Muslims in Myanmar have lived together harmoniously for decades.'

'We were not expecting this violence when we chanted for peace and reconciliation in 2007,' said Ashin Nyana Nika, the abbot of Pauk Jadi monastery who has attended a meeting sponsored by Muslim groups to discuss the issue.

Ashin Sanda Wara, the head of a monastic school in Yangon, has been quoted by the *New York Times* as saying that the monks in Myanmar are divided nearly equally between moderates and extremists.

Okkan-based Shwe Nya was reported by *The Irrawaddy* as telling a gathering of his fellow monks, 'We need to work together to stop this violence. This is not only good for Okkan, but good for Myanmar. If this conflict spreads to the whole country based on religious issues ... there will be a coup. So if this continues to happen, Myanmar is headed in a dark direction.'

If a military faction or hardliners inside the cabinet are playing the anti-Muslim card, the real objective is probably not to stage another coup. The 'dark direction' is more likely to be towards entrenching the role of the armed forces in the country's new quasi-civilian configuration by seeking to convince the grassroots population that a strong army is still needed to protect the nation from falling into further chaos.

It may also be part of the ruling party's strategy to cling on to power and prevent reformist parties such as Aung San Suu Kyi's National League for Democracy from winning the 2015 general election.

During all the persecution of the Rohingyas and other Muslim communities, Suu Kyi, who has won many awards abroad for her moral leadership, has maintained a steadfast silence. Whenever cornered by the media, she has retreated into bland pleas for 'communal violence to end' and argued that it would be unhelpful to take sides.

But since May 2012, Suu Kyi has undergone her own metamorphosis, from iconic moral voice against dictatorship to a politician who is hoping to lead her NLD party to victory in the 2015 polls. Many fear that the anti-Muslim tide is being whipped up to undermine her chances of victory.

One of the few public statements countering the anti-Muslim prejudice came from senior Buddhist leader and respected scholar Sitagu Sayadaw in a speech at the Myanmar Peace Centre in Yangon on 30 March. He declared, 'I … deeply denounce these religious, racial and commercial conflicts with no exceptions. Lord Buddha teaches non-violence. I firmly believe other religious denominations share the same concept, and no god prescribed conflict of any kind.' He told his audience that all religions 'aim for eternal peace of mankind'.

Sadly, his noble call to follow the teachings of the Buddha has received little attention in the Burmese-language media.

Any hope of Myanmar advancing towards democracy will depend in part on the outcome of this struggle over the soul of Myanmarese Buddhism – whether it results in a regression into ethnic chauvinism or an enlightenment that supports human rights of all religions and races. ◆

Tom Fawthrop is an author, roving reporter and filmmaker. He directed Where Have All the Fish Gone? *(Eureka Films), a documentary about the damming of the Mekong River.*

Guatemala: 'Femicide' courts hold out new hope for justice

The establishment in the Central American state of Guatemala, the country with the highest number of killings of women in the region, of a special court to try cases of femicide – gender-based murder – is a necessary if only a first step forward. *Danilo Valladares* reports.

DOUGLAS Cuc, a 32-year-old clown, entered the courtroom with the same smile on his face as when he told jokes for coins on the buses in the town of San Miguel Petapa, near the Guatemalan capital. But this time, there was no greasepaint on his face, he did not wear his clown's nose, and he was in handcuffs.

A year and a half earlier, he visited his ex-wife, Evelin Pacheco, on the pretext of taking something to their 10-year-old daughter. Neighbours said that on the night of 25 January 2012, they heard screams and then complete silence. The next morning, the young mother's lifeless body was found at the foot of the stairs.

Cuc was later taken to the scene of the crime, where he tried to persuade the investigators that his ex-wife had fallen down the stairs. But her body showed signs of strangulation and bruising.

Based on the forensic evidence, the history of violence in the relationship and the testimony of neighbours and other witnesses, the public prosecutor's office charged him with femicide – gender-based murder – in a trial that is being held in a new type of court specialising in violence against women.

Cuc, who by day made bus passengers laugh, by night became a tyrant who repeatedly beat the 26-year-old Pacheco, who worked full-time to support the family.

Eventually she left him, but her ex-husband continued to attack her and make death threats. Pacheco denounced the harassment to the authorities, and on three occasions requested restraining orders, which were granted. But as her mother told the court, weeping and holding her photograph, none of this prevented the tragedy.

Pacheco is one of 708 women who suffered violent deaths in Guatemala in 2012, according to the National Institute of Forensic Sciences (INACIF). During the first half of this year, there were 403 deaths, 66 more than in the same period of 2012.

A march against violence against women in Guatemala. Guatemala has been ranked as the country with the highest number of killings of women in Central America.

The Central American Integration System (SICA) and the Council of Ministers for Women in Central America (COMMCA) rank Guatemala as the country with the highest number of killings of women in the region.

This Central American country is also one of the most violent in the world overall, with a murder rate of 48 per 100,000, according to the United Nations Development Programme (UNDP)'s Central American Human Development Report 2009-2010. That is in comparison to a Latin America average of 25 per 100,000 and a global average of nine per 100,000.

Specialised courts

The first hearing in Cuc's trial was held 15 July at the court for crimes of femicide and other forms of violence against women, in the province of Guatemala, where the country's capital city is located. The court, composed of three women judges, is the result of advances in Guatemala which in 2010 became the first country in the world to create specialised courts for femicide and other forms of violence against women.

The 'law against femicide and other forms of violence against women', which created the specialised courts, was approved in 2008 in response to the wave of murders of women in this impoverished country. It establishes preventive measures, criminal offences and penalties that seek to guarantee women the right to a life free from physical, psychological, sexual, moral or economic violence.

The specialised courts have been set up so far in the provinces of Guatemala, Chiquimula, Quetzaltenango, Huehuetenango and Alta Verapaz, which together account for the majority of violent deaths of women in the country.

The National Centre for Judicial Analysis and Documentation (CENADOJ) told Inter Press Service (IPS) that while in ordinary courts only 7.5% of cases of femicide and other forms of violence against women result in conviction and sentencing, in the specialised courts, the proportion is already over 30%.

The key to their success has been

addressing the violence from a gender perspective, analysing each case in the context of inequity, discrimination and misogyny, Ana Maria Rodriguez, the presiding judge of the court trying Cuc, told IPS.

In the case of Pacheco, for instance, the public prosecutor's office and Fundacion Sobrevivientes (Survivors Foundation), a non-governmental organisation that represents the young woman's family, are trying to prove that the actions of her ex-husband sprang from deep-rooted machismo, as he regarded the victim as his property.

With the exception of two male judges in Quetzaltenango, the cases before these specialised courts are heard by women judges who were trained in gender and justice issues at the judicial branch's School of Judicial Studies.

The courts also employ a psychologist and a social worker, and have daycare facilities to look after children while their mothers testify, so that they are not hindered from participating in trials by the difficulty of finding childcare.

Angelica Valenzuela, the head of the Centre for Research, Training and Support for Women (CICAM), told IPS that the specialised courts have had a positive impact. But she pointed out that they are still not operating all over the country, and the cases that they deal with must be filtered through courts of first instance, which determine the classification of crimes but do not have direct contact with the victims.

Judge Miriam Mendez of the femicide court in Guatemala province said that prosecutors skilled at arguing cases are as important in the prosecution of a crime as having specialist courts for crimes against women.

She said one of the problems is that 'testimony remains the chief evidence', due to the shortcomings in the use of other types of evidence, like forensics.

As Norma Cruz, the head of the Survivors Foundation, told IPS: 'The goal is zero deaths and zero impunity,' and there is still a long way to go to make this happen. – *IPS* ◆

Going beyond organic: Agroecology as the next step

Reporting on a Southeast Asian Training Course on Agroecology held earlier this year in Solo, Indonesia, *Nina Somera* explains why agroecology is an emerging alternative in sustainable agriculture.

IN the vast sugar plantations in the central islands of the Philippines, the *hacienderos* are picking up lessons from small farmers who resisted the Green Revolution. Many are turning to organic agriculture. This is also an emerging trend in some Latin American plantations whose leadership and control suggest the endurance of colonialism.

But if just a few companies practising organic agriculture dominate 70% of the market, as in California, is there enough reason to consider this a step forward with the environmental and climate crisis as a backdrop? With social justice as a primary benchmark of change, indeed this may well be a step backward.

Agroecology, as consistently articulated by progressive scientists led by Miguel Altieri and Clara Nicholls, is an emerging alternative in sustainable agriculture. Indeed, it goes beyond organic agriculture because at its core lie the leadership of farmers and interests of communities.

Altieri and Nicholls were joined by more than 40 participants from Indonesia and the rest of the region at the Southeast Asian Training Course on Agroecology, organised by Third World Network and Aliansi Petani Indonesia (Indonesian Peasants Alliance) from 5 to 9 June in Solo, Indonesia.

The course was organised to build the capacity of farmers, farmers' organisations and non-governmental organisations (NGOs) working on sustainable agriculture, in order to equip them with a comprehensive understanding of agroecology, its principles and concepts, and the evidence base of its successes, as demonstrated by examples from all over the world.

asianfarmers.org

The Southeast Asian Training Course on Agroecology *(pic)*, held in Solo, Indonesia, in June, was organised to equip farmers and farmers' organisations with a comprehensive understanding of agroecology.

Agroecology as a concept

As a science, agroecology is deemed the most balanced approach in addressing food security and at the same time ensuring environmental integrity. In fact, the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), currently regarded as the most comprehensive and independent assessment of agriculture to date, has dubbed agroecology as a way forward in food security and in rectifying the damage wrought by the Green Revolution. As it asserts, 'An increase and strengthening of agricultural knowledge, science and technology (AKST) towards agroecological sciences will contribute to addressing environmental issues while maintaining and increasing productivity.'[1]

Agroecology mimics nature, its diversity in terms of landscape, species and synergies as well as high levels of recycling. Hence in an agroecological farm, a field is surrounded by trees, which, like a forest, act as a buffer for winds and rains while providing food, fodder and natural fertilisers. Meanwhile the field mixes different varieties of different plant species including those in the hedgerows, and integrates animal species such as eels which shake off the pests in rice paddies, chicken which hunt for snails in corn fields, and beneficial insects which act to control pests. Indeed an agroecological landscape features balanced relationships that are complementary, antagonistic and neutral. 'Agroecology copies a natural ecosystem and its inherent strengths include interdependency, self-regulation, self-renewal, self-sufficiency, efficiency, and diversity,' Altieri explained.

Otherwise bothersome species like weeds play a critical role in agroecology. As Nicholls, herself an entomologist, remarked, 'One way to diversify farms is to introduce "weeds", which also have an ecological role. They are trap crops which are capable of repellent action, attracting pests and are a source of alternative food for beneficial insects.' The same principle explains why Latin American farmers plant maize together with *lupin*, a weed that pests prefer. In Brazil, farmers planted cabbages with wild brassica, while in Colombia, it was observed that when beans are surrounded by a grass that has a certain odour, pests can be repelled.

Agroecology is a modern science that pays homage to traditional knowledge and the expertise of farmers. 'Agroecology acknowledges the role of farmers and at the same time considers ongoing trends such as the realities of climate change, that farmers cannot predict the weather unlike before. Agroecology marries different approaches without interfering in a natural ecosystem's operations,' Altieri remarked.

A native of Chile, Altieri highlighted innovative methods which have been perfected by indigenous peoples but have been overshadowed by the imposition of modern science. 'In Latin America, farmers have organised themselves to protect their crops from frost by planting *waru-waru* several thousand kilometres above sea level. Through this, they managed to recover some 4,720 hectares which are vulnerable to frost,' he shared. *Waru-waru* is a technique in the Andes designed to control water and prevent soil erosion.

Agroecology as part of social movements

But agroecology is more than a science that attempts to mimic nature and restore its diverse species and relationships. It is informed by a collective need for change in a context that is dominated by industrial giants and resource-intensive agriculture. Next to ensuring environmental integrity, agroecology aims for food sovereignty, where small farmers take control over their land, enrich traditional knowledge, keep and diversify their seeds and provide food for their families.

Agroecology is a foil not only against the Green Revolution, which entails significant inputs, but also to similar quick fixes such as genetically modified (GM) crops. As Jack Heinemann in reviewing the IAASTD observed, 'Any general claim that GM crops will reliably produce more than conventional crops in the same environments is not scientifically substantiated…The authors of the Assessment thus had reason to step back from endorsing bold claims of enhanced yield and/or revenue gains from existing commercial GM crops.'[2] Besides, as several studies have suggested, the problem has never been the availability of food but rather its skewed distribution that has consequently led to a wastage that amounts to some 1.3 billion tons.[3]

As Altieri pointed out, 'When the food prices peaked due to speculation in 2008, the profits of Bungee, Cargill and ADM soared. The food empire controls the food that will be produced, the technologies to be used and the food and its quality and quantity that consumers will eat. Agroecology is one way to bypass this empire.' He further noted that apart from food, companies have secured lands, in several cases through massive land-grabbing, in the global South for the production of biofuels.

The bias of agroecology towards farmers likewise informs its participatory method of research. In fact, when new technologies are introduced, especially in rehabilitating damaged lands, the following principles are followed: that a technology is based on indigenous knowledge; is economically viable, accessible and based on local resources; is socially, culturally and gender sensitive; is risk-averse and adaptable to the changing environment; and enhances total farm productivity.

This method has also been extended in more political formations which support agroecology. In Latin America, the *campesino y campesino* programme, which features farmer field schools where traditional knowledge on farming can be enhanced, also aims for a political mandate for their members. This way, their members can influence policy processes and effect political change.

Agroecology in South-East Asia

In the South-East Asian region, governments have become close followers of the Green Revolution, at times gravely compromising indigenous and traditional approaches. Gatot, an 82-year-old Indonesian farmer, still recalls the many times he spent in prison during the Suharto dictatorship because he kept his seeds and refused the package of new varieties and inputs from the government.

'Once I planted traditional paddy and the government took it out and I was detained for one week. After I was imprisoned, I replanted the paddy. After that I invited the government to take my paddy. I told them that "this is the paddy that you burned". I have been in and out of prison. In any case, what we do is called sovereignty. This is the power for us to create among ourselves. We do not have to kill other species, unlike Monsanto, which all have to fight against,' he shared. Today, Gatot has been going around the country teaching seed banking even to university students. Back in his home, he has kept and enriched some 35 varieties of rice.

Like Gatot, scores of small farmers have resisted industrial agriculture and have turned towards organic farming. In the Philippines, the provincial governments of Negros Island forged an agreement towards making the entire island an organic zone. With supporting ordinances, these provinces can benefit from the subsidies allotted through a national law on organic agriculture. Today, a public-private partnership formation called the Negros Island Sustainable Agriculture and Rural Development Foundation (NISARD) supports 10 'organic villages', providing training and opportunities for marketing.

Meanwhile in the Mekong, similar initiatives are undertaken to foster traditional breeds. Thailand's Alternative Agriculture Network sells its members' produce to a green market and at the same time conserves about 180 varieties of rice, both traditional and improved. Within the group, there are 1,000 farmers who are engaged in organic farming. Similarly, Cambodia's Farmer and Nature Net (FNN) has been promoting small-scale farmer households, botanical pesticide and composts, natural resource conservation and reforestation.

One of the key challenges confronting farmers in Cambodia, Laos, Vietnam, Myanmar and Thailand lies in the state of the Mekong River, where more dams are being built and water is increasingly diverted for the use of industrial farms, among others. As the Community Development and Environment Association (CDEA) of Laos lamented, 'Water source is poor so many projects fail. The water is also not that clean.' Likewise, the Sustainable Agriculture and Environment Development Association (SAEDA), which also promotes a market for the produce of small farmers, added, 'Farmers are faced with concerns such as the dominance of businesses in controlling agricultural policies, high volume of imports, infertility of the soil, loss of traditional culture, pesticides, lost biodiversity, health impacts, high investment, and low yields.'

Women and agroecology

The role of women in agriculture, especially in keeping traditional knowledge, is quite significant. In some cultures, certain seeds and varieties are used in rituals which are often performed by women on behalf of communities. Anecdotal stories about the Green Revolution refer to women as among those who resisted the new varieties of potatoes and rice, and as a result kept traditional seeds which became useful when it was clear that such conventional farming was a failure.

The preference of women to stick to traditional and indigenous methods in maintaining small farms allows them to embrace agroecology easily. Such preference is not only an outcome of women's doubt over the Green Revolution. In fact there is a strong link between violence against women and low yields in conventional farms, whose failure to produce expected yields leads men to vent their frustration on women and girls in the household.

In Vietnam, the Center for Sustainable Rural Development (SRD) involves women in its projects in more than 10 provinces, where it promotes the system of rice intensification (SRI) to reduce pesticides and water needs. In some SRD-supported projects, the farmers surround their corn or rice fields with wild trees and sunflowers to repel pests. The tillage area uses rice straw to keep the cattle house's floor clean. Wild peanuts surround the tea crops to save on water and improve tea quality.

Meanwhile in the Southern Philippines, the METSA Foundation specifically caters to women farmers, who are trained in organic farming, organising communities, collecting traditional seeds and developing natural fertilisers. Despite these women-focused programmes, much remains to be done in terms of the cultural context of METSA's members. As METSA described, 'We still have a patriarchal culture, where women are often regarded as helpers, who do not have decision-making power. Sometimes our members even have difficulty in applying what they have learned from our seminars.'

It is important to note that women are also among those immediately rendered vulnerable in issues around access to land. In other Asian contexts, many women do not own the land they till. These issues are further compounded by cases of contamination by GM crops and mining.

Moving beyond organic agriculture

While there is an increasing interest among small farmers in organic farming, a shift is not easy especially in lands that have absorbed pesticides. On the one hand, the interest in organic farming tends to counteract the sales pitches of GM crop producers. An increasing number of consumers now prefer organically grown crops as much as possible. On the other hand, the shift to organic farming by plantations has not been comforting for social movements.

Organic agriculture omits the use of pesticides and, in the marketing of its produce, requires a certification process which can be done by producers, buyers and an independent body.

This process entails cost for the small farmers, who need to pay the same amount of resources as plantation owners as the standards are silent about the size of the land.

According to Altieri, there are about 35 million hectares of land devoted to organic farming globally. However, 80% of these are monocultures. In California, 3% of organic farmers control 70% of the market.

These situations hardly reflect farmers' food sovereignty and even social justice. As Nicholls pointed out, 'The problem is that we are greening plantations which have displaced communities. It's like "sustainable soy production". The principles of agroecology can be applied in big farms but maybe not in thousands and thousands of hectares of oil palm.'

Altieri affirmed, 'Agroecology consists of social, economic and environmental goals. The features of a new biodiverse organic agriculture are family- and community-based, supported by land reform, just prices to farmers, fair trade and primacy of local markets, and conducive policies.'

This is the agricultural paradigm shift that the world needs to face the challenges ahead. ◆

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Endnotes

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VIEWPOINT

Why Britain does not revolt

While anti-austerity demonstrations and protests have broken out in countries of Southern Europe, Britain appears to be remarkably quiescent in the face of a regime of austerity imposed during one of its longest recessions. *Jeremy Seabrook* explains why.

According to a government survey of national well-being, Britain became a happier place in the year to mid-2013 – an index of contentment which was partly ascribed to the London Olympics.

WHY does the wave of unrest affecting much of Europe, West Asia and other parts of the world fail to break on the shores of Britain? We have been through the longest recession for more than a century, incomes have failed to keep pace with inflation, benefits to the poor and unemployed have been cut and a new punitive mood stalks the land. Surely this is a recipe for popular agitation and demonstrations.

Apparently not. According to a government survey of national well-being, Britain became a happier place in the year to mid-2013; an index of contentment which was partly ascribed to the Olympics and partly to the jubilee year of the Queen's accession to the throne.

This does not suggest there were no serious disturbances in Britain Britain in recent years, as the riots of 2011 attest, following the police shooting of Mark Duggan in North London. Looting and arson took place over several nights, mainly in London and the Midlands. What began as a protest at the killing of yet another black man by the police turned into an orgy of trashing cars and shops. Expensive goods were taken, but so too were trivial items: some people were charged with the theft of items such as bottled water and toilet paper.

There has been a long tradition of rioting in Britain, including the 'king and country' mob in the 18th century, anti-industrial riots in the early and mid-19th century, labour agitation in Trafalgar Square in the 1890s, the General Strike in 1926, and more recently, in 1980 in Brixton and Toxteth, and in the early 2000s, in the northern towns.

Other political demonstrations have certainly not been absent; most memorably, there were the two million people who demonstrated against the Iraq war in 2003. In 2010, students protested against a rise in tuition fees, and central London was the scene of widespread and damaging agitation. Disability groups have consistently kept vigil against new stringent tests on capacity to work, while the notorious 'bedroom tax' – which penalised people living in social housing if they had a spare bedroom (even if such a room was required for the care of a sick or disabled family member) – has also led to passionate and vocal protest. People have gathered in numbers to show solidarity with the resistance in Syria; local groups have tried to prevent 'fracking' in many parts of Britain.

None of this, however, adds up to the angry crowds seen on the streets of Athens, Madrid or Paris, let alone the throngs which have filled Cairo, Istanbul, Tunis or Bahrain. There has been no coordinated campaign against the UK government's 'austerity' programme (least of all by the nominal Opposition), and no popular upsurge against growing social injustice and inequality.

Of course, the British remain in thrall to their own myths – we are a tolerant people, phlegmatic and pragmatic, slow to anger, but, as the old imperial image has it, 'if the tail of the lion is tweaked once too often, the beast becomes implacable.' We also like to think we are masters of under-statement, believe in fair play and have sympathy for the 'underdog'.

An element of truth may lurk in these fables. But deeper reasons inhibit the British from reacting. As the first industrial society, Britain passed through a long period of economic violence, when a wasting peasantry was compelled into the manufacturing and mining centres of the early 19th century, and subjected to appalling degradation in living and working conditions. It is impossible to overstate the coercive nature of that upheaval. It was accomplished with limited public disorder, although the period was punctuated by disturbances, from the machine-breaking Luddites to the Swing riots in the 1830s against threshing machines. Far more characteristic were law-abiding demonstrations – the peaceful cotton operatives of Manchester, cut down by the cavalry in what became known as 'Peterloo' in 1819; and the Chartists who, after their great Petition was rejected by Parliament for the last time in 1848 (despite the persistence of a 'physical force' minority), meekly dispersed and went home. The trades unions, like political parties of labour, have been anxious to show their respectability and observance of constitutional proprieties.

There is a dissonance between rhetoric of recession, economic calamity and austerity and the direct experience of a majority of the people. Just as the 1930s was a time of retrenchment and unemployment, it was also a deeply conservative period: fear rarely precipitates radical change, as Auden understood when he wrote of that 'low, dishonest decade' in his poem, '1 September 1939'. Today, unemployment has not risen as expected: people have accepted wage cuts in order to keep their jobs. Incomes have fallen, workers are on 'zero-hours' contracts, but the idea persists that if we keep our heads down, the storm will blow over.

At the same time, the very rich have been spectacularly adroit in furthering their own self-enrichment. That this has not rejuvenated what used to be called 'the politics of envy' puzzles some observers. But the rich have been transformed in the eyes of the people, rehabilitated from an era in which they were regarded as hyenas, bloodsuckers or vultures, monopolists of the necessities of the poor: they have become wealth-creators, the generators of riches, whose golden touch permits our survival. They are now benefactors and philanthropists, and we are all dependants, pensioners of their tireless exertions.

Secondly, the British have had a long time to get used to the slow, insistent 'naturalisation' of capitalism. From the early industrial era, when Edmund Burke described 'the laws of commerce' as 'the laws of nature…which are the laws of God', the enthusiasts of Political Economy have sought to represent capitalism as a natural phenomenon. It alone understands 'human nature', in its full egotistical, greedy spirit, which it is uniquely qualified to turn into social good. Primitive magic may be at work in this eccentric belief-system, but this only reinforces the savants of the free market; and the success of neoliberalism since 1980 represents the second coming of the ideology of early industrialism. It is all familiar; and people accept it as an old friend, rather than question it as an ideological aberration.

The decay of any alternative socialist model also plays a role in the relative quietism of the British people. The long-term consequences of Thatcher's victory over organised labour, and the extinction of the industrial base which gave it life, are also significant. The most alluring 'alternative' for the voters of Britain is no longer the Left, but is represented by the Right, the Far Right and the Even Further Right. It is the United Kingdom Independence Party, not Labour, that threatens the erosion of the Conservative vote. And to the right of them lurk the British National Party and the English Defence League; sinister emblems of a still-unresolved relationship between Empire and the essential contribution to the British economy of émigrés from those sometime subject places.

The outlet on the Right for the spleen, xenophobia and thwarted imperial itch of the British contains anger that might otherwise have been directed at ruling elites. These can always be replaced by even fiercer opponents of migration, welfare and Europe, the diabolic trinity of popular hatred. Our insularity is a last defence against a world we do not like very much; and we think, delusion though it may be, that we are self-reliant, independent and, in the unfortunate sporting metaphor, punching above our weight in the world.

The poor in Britain have also become a minority. This is a far cry from the days when the poor were feared as a mutinous, dangerous majority of the people. That is all behind us. Once the poor were reduced to minority status, they were de-powered electorally. It is easy to create a sense of indignation against them among those who are not poor; and this adds to the burden of the humiliated and excluded – the long-term sick, the defeated and disturbed, the emotionally and mentally infirm, the frightened and despairing.

There are other elements: the power of the government and its media supporters to assist in an optimistic confection of a sunny version of Britain, irradiated by the self-satisfaction of the well-to-do. To the government's index of contentment, we should add victory on the rugby pitch in Australia, success in cricket, the first male victor at Wimbledon for three-quarters of a century, and winner of the Tour de France. Then there was the birth of a new heir to the throne, so that there are now three kings in waiting, a dynastic determinism that guarantees everything will go on as it is 'for ever'. As if that were not enough, the 'holy grail' of economic growth has been resumed, so that Cameron and Osborne can claim that the pain of austerity has worked, their prudence is vindicated, unlike the drifting entities of the eurozone. It is hard to assess the effect of perpetual hymning of British success on the public mood; it creates a conviction that things 'could be much worse'; while the idea that we have 'pulled through' also arouses memories of other moments of adversity, especially that of the Blitz, when we stood alone and showed the world that 'Britain could take it'.

A whole psycho-history stands behind the quietism, the fatalism, the acceptance of the way things are. If Britain is a deeply conservative place, this is because violent coercive change has been thrust upon the people ever since the early industrial era. People want a quiet life, even if that means the fragile and always threatened stability of a system that demands constant flux, mobility and change.

There is more. The convergence between Britain and the United States is growing. The worship of wealth and celebrity, the absence of any popular ideological conviction; the acceptance that whatever happens in America will duly find its way to Britain, whether drive-by shootings, mass killings in public places, or even popular speech and social customs – until recently, nobody in Britain had heard of trick or treat at Hallowe'en or School Proms, even for children leaving primary school. Our eyes are constantly turned towards the West, from where blow the mysterious zephyrs of development.

The idea lives on that we live in a favoured isle, unaffected by extremism, either climatic or ideological; that we are temperate, fair-minded and tolerant; that our institutions are rock-solid and that we, mother of parliaments, 'gave' the world democracy. It may be complacent, even delusional; but it is a tenacious belief, and would need something far more disastrous than mere economic downturn to drive the people of Britain onto the streets. ◆

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Music as social inclusion shines in Salzburg

A choir of 120 children and young people which included dozens of disabled youngsters and made its debut at the recent Salzburg Festival provided moving testimony of Venezuela's bold efforts to combine musical education and social inclusion. *Humberto Marquez* reports.

A SEA of white-gloved hands swaying gracefully to the rhythm of tropical music shows the audience in the hallowed Mozarteum concert hall in the Austrian city of Salzburg how Venezuela is combining musical education and social inclusion.

The White Hands Choir made its international debut on 8 August as one of dozens of ensembles, eight of them from Venezuela, at the Salzburg Festival, the music and theatre fest held every summer in this city in honour of its most famous son, composer Wolfgang Amadeus Mozart (1756-91).

Venezuela's White Hands Choir made its international debut at the Salzburg Festival in August.

It is made up of 120 children and young people, some of whom raise their voices in song while others execute an imaginative choreography of flowing hand movements, accentuated by their white gloves.

The distinctive feature of this choir is that dozens of its members are youngsters with visual, auditory, motor or cognitive disabilities, and it has been organised by the Venezuelan National System of Youth and Children's Orchestras, widely known as 'El Sistema', to include them in its project to combat poverty and exclusion.

'For us, participating in the festival marks a before and after,' Jessica Montes de Oca, in the front row of the white-gloved section of the choir, said in sign language. 'It's exciting to perform in the city where Mozart was born and to show that deaf people can make music. We are breaking down barriers.'

With their dark uniforms providing contrast for their gloved hands, the choir was loudly applauded from the start of their programme, which began with sacred music like British composer John Rutter's 'Ave Maria' and Argentine musician Athos Palma's 'Gloria'.

'It's exciting... to show that deaf people can make music.'

The ovations were louder still when they presented Venezuelan pieces like 'Canto a Caracas' (Song for Caracas) composed by Billo Frometa, 'Los dos gavilanes' (The Two Sparrowhawks) and 'Las cosas bellas de Lara' (The Beauties of Lara) by Adelis Freites, and 'Alma Llanera' (Soul of the Plains) by Pedro Elias Gutierrez, usually their final number.

Members of the audience, who paid up to 65 euros ($86) for tickets, cheered, clapped, called for encores and were visibly moved to tears.

In the orchestra section, giving a rapturous standing ovation and waving his hands in imitation of the children in the choir, was Spanish tenor Placido Domingo, seated beside the creator and conductor of El Sistema, the musician and economist Jose Antonio Abreu.

'Congratulations. I am astonished by what began with nothing but a teacher's great love and lifelong dedication,' Domingo told the press.

El Sistema got its start in Caracas in 1975, in a basement parking garage where Abreu began to rehearse with a dozen teenagers. He described the social goals of his movement, which now involves some 400,000 children and young people in nearly 400 orchestras and choirs in 280 free music schools throughout Venezuela.

'This is not just an artistic endeavour, but basically a social programme aimed at fighting poverty and marginalisation. A total of 400,000 families are involved in this programme to combat poverty, because poverty is not only material but spiritual, and the most terrible poverty is the lack of an identity,' Abreu said in a recent interview with Inter Press

Service (IPS).

Naybeth Garcia, the White Hands Choir director, said on the eve of its Salzburg performance that 'there are now exactly 2,004 children and young people with disabilities participating in El Sistema choirs, the result of educational work begun 20 years ago to educate and integrate people with and without disabilities.

'It is not about integrating with normalcy, but about making integration normal. We have people with disabilities who can teach us about music and life, and offer food for reflection to those of us who do not have those disabilities,' said Garcia.

John Jairto Rojas, who has limited motor and language skills, said, 'I enjoy it all, but if we had not worked hard we would not have been able to come here, and show that a wheelchair is not a barrier.'

Alfredo Briceno, a young man who does not share the disabilities of some of his fellow choir members, joined the programme because of his musical interests and also out of friendship: as a child he studied with Gustavo Flores, a blind engineer who is married and has two children, who fills multiple roles in the group as a tenor, keyboard player and enthusiastic supporter.

Salzburg has brought El Sistema new recognition: the Simon Bolivar Symphony Orchestra, the organisation's flagship band, conducted by vibrant young music director Gustavo Dudamel, who also conducts the Los Angeles Philharmonic in the United States, opened the festival on 24 July.

The Venezuelan National Youth Choir, String Quartet, Brass Ensemble, Teresa Carreno Youth Orchestra, Caracas Youth Orchestra and National Children's Orchestra also performed in Salzburg, which is festooned with posters of the Simon Bolivar Orchestra and even some Venezuelan flags.

Experiences like this, which brought 1,400 musicians on tour from Venezuela, are an ideal opportunity for Venezuelans to showcase the orchestras of El Sistema as a means of perfecting and renewing music, but also of seeking new pathways for social integration. – *IPS* ◆

Mehdi Akhavan Sales (1928-1990), a pioneer of modern Iranian poetry, was incarcerated for his political activism after the overthrow of the democratically elected government of Mossadegh by the 1953 CIA-backed coup (see page 34). Published in 1956, his most famous poem draws on the metaphor of a chilly winter scene to depict the bleak, oppressive social and political atmosphere that followed the restoration of the autocratic rule of the Shah.

Winter

Mehdi Akhavan Sales

And if you ever greet them
they will not pause one instant
to greet you back.
Heads are hanging sternly lowly.

And if you salute the passing friends
They will not raise their heads
They will not move their gaze
to even glance at your face.

The sight is lost in an opaque, thick haze.
No sign of the stars: They no longer blaze!
The eyes see no more – but one step ahead;
We pass silent and sombre with our tumbling tread.
To a passing man, it is your hand that you lend
Only hesitantly he extends his to you,
Alas My Friend!
The air is bitter cold and cruel, the route is a
dead-end!
You exhale and your breath turns into a dark blur,
raising insolently a wall in front of your eye.
If this is your own breath then what could
you expect
from your friends – of far-away or close-by?

O My Honest Saviour!
O My Old Virtuous Companion!
I hail you with reverence and respect!
Welcome me back!
Open me your door!
It is me, it's me: Your visitor of all nights!
It is me, it's me: The sorrowful errant!
It is me: The discarded, The beaten stone!
It is me: The injury to Creation; The song out
of tune!
Recall? Not the black, not the white: The colourless
buffoon!
Come and open me the door!
I am freezing; open the door before!

O Counterpart! O Generous Host!
Your usual guest is trembling in the icy outside!
And if you have ever heard a sound:
It is not raining and in this lane there is not even
a soul!
The noise is from the encounter of my teeth
with this overwhelming cold.

Tonight I am here to reimburse you in mass!
I am here to go clear in front of a wine-glass!
Do not say 'It's late; it's almost the crack of dawn!'
The sky is deceitful with its blushed fawn!
This red is not from the rays of light;
The red is the imprint of this cold's shameless clout!
The pendant of the bosom of the heavens, Sun, –
dead or afoot–
is buried, obscured, beneath the weight of a
nine-storey vault!
O Counterpart! O Generous Host!
Pour wine into the glass to light up this bitter exile:
You see? In this winter days and nights are equal.

And if you ever greet them
they will not pause one instant
to greet you back.
The air is heavy, the doors are closed,
Heads hang lowly, and hands are cloaked.
Your breath turns to a dark shadow,
Hearts are fading away under the sway of sorrow.
The trees are naked, like frozen, forsaken bones,
Earth is desolate, Sky is falling down.
Moon and Sun are lost behind Loads of Litter:
It is, indeed,
The Reign of Winter.

Translated by Maryam Dilmaghani