Testimony in Opposition to the TPP
Before the
House Committee on Commerce and Economic Development
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Too often, trade debates about particular trade agreements are reduced to arguments about trade itself, as if the critics of a particular agreement oppose all trade and would cut off all imports and exports. Nothing could be further from the truth.

U.S. working families support trade. Many of us work in industries that rely on exports, including agriculture, lumber, and heavy machinery. We work with our employers whenever possible to increase quality and productivity and reach new customers.

With regard to the TPP, its potential for harm far outweighs its potential benefits.

The TPP simply won't open many new markets for U.S. exporters.

- The TPP would actually open very few new markets because the U.S. already has "free trade agreements" with six of the eleven countries in the group.
- The applied tariff rate for about 90% of U.S. exports to TPP partners is already **zero**. Of the remaining 10% of U.S. exports to TPP countries that face any tariffs at all, half face tariffs of **5% or less**.
- Many of the "new consumers" the TPP's proponents talk about reaching can't afford to buy U.S. exports. The GDP per capita of Vietnam, for instance, is just $2,000 a year.
- Even well-known free trade supporter and Nobel Prize winner Paul Krugman has noted that more trade won't fix what's wrong with the U.S. economy.

Those supporting TPP have realized the economic case for the deal is weak. So they often turn to making arguments about how it will solve labor and environmental problems in our trading partner countries. But the facts tell a different story. Illegal logging in Peru has continued unabated since the U.S.-Peru FTA went into effect in 2009, and 99 trade union leaders have been assassinated in Colombia since the U.S.-Colombia FTA went into effect in 2012. These two deals have labor and environmental chapters very similar to the ones included in the TPP—in fact the environmental provisions of the Peru deal are far stronger than those in the TPP.

The problem here is not that the U.S. is trading: it is the rules that govern such trade. These rules actually incentivize offshoring: making it easier to offshore jobs (by offering additional legal certainties) and then export to the United States, duty free, the stuff we used to make ourselves. Only now, fewer American workers can afford it because our wages are being pushed downward—just one of the negative effects of these deals.

Of particular relevance to state governments are the TPP's provisions on medicines, procurement, and private justice for foreign investors called ISDS.
With regard to procurement, although the TPP does not bind state and local purchasing policies at the moment, it contains a provision (Article 15.24.2) requiring the TPP parties to begin negotiating state and local purchasing commitments within three years after the deal goes into force. Legislators concerned about "Buy State" and "Buy Local" programs, as well as responsible bidding requirements (e.g., living wage requirements or requirements that contractors cover same-sex partners), should speak up to ensure states cannot be bound to the TPP's procurement provisions without legislative consent and a Congressional vote. It is not clear that responsible bidding requirements will be free from challenge under the TPP or that a Congressional vote will be required to expand procurement coverage.

With regard to medicines, the TPP locks in excessive intellectual property protections—including protections for market exclusivity that can delay generic competition even after patents expire. It also guarantees (in Annex 26-A) foreign drug makers an opportunity to appeal a coverage or pricing decision for Medicare—for instance if the company feels its drug should be covered, but isn't. Most dangerous, however, is that foreign drug companies that don't like final decisions regarding their patent extensions or their Medicaid coverage and reimbursements decisions can use the investor-to-state dispute settlement process to challenge such decisions in private tribunals, and reap huge sums of taxpayer money if they win.

This private justice system puts foreign investors on a different footing than home-grown Vermont companies. These foreign investors, if they are unhappy with a local action in Burlington, a state action in Vermont, or any federal action, can sue the US government before a panel of three private lawyers, who aren't accountable to anyone and whose decisions cannot be appealed. Unlike Bruegger's Bagels or Ben and Jerry's, these foreign investors can either skip state and federal courts entirely, or use them and then get a second bite at the apple if they lose.

Under the TPP, foreign investors can challenge any decision—whether legislative, regulatory, judicial or administrative. They can bring cases for actual expropriations, just as someone with a Fifth Amendment claim would, but they can also bring a claim for an indirect expropriation, which is akin to paying a company for the right to regulate it. They can also bring a separate claim for a violation of their right to "fair and equitable treatment." This standard is so vague and overbroad that one panel said the country of Ecuador violated it simply by exercising its rights under a contract with Occidental Petroleum.

Here are three examples of cases involving provincial and local action.

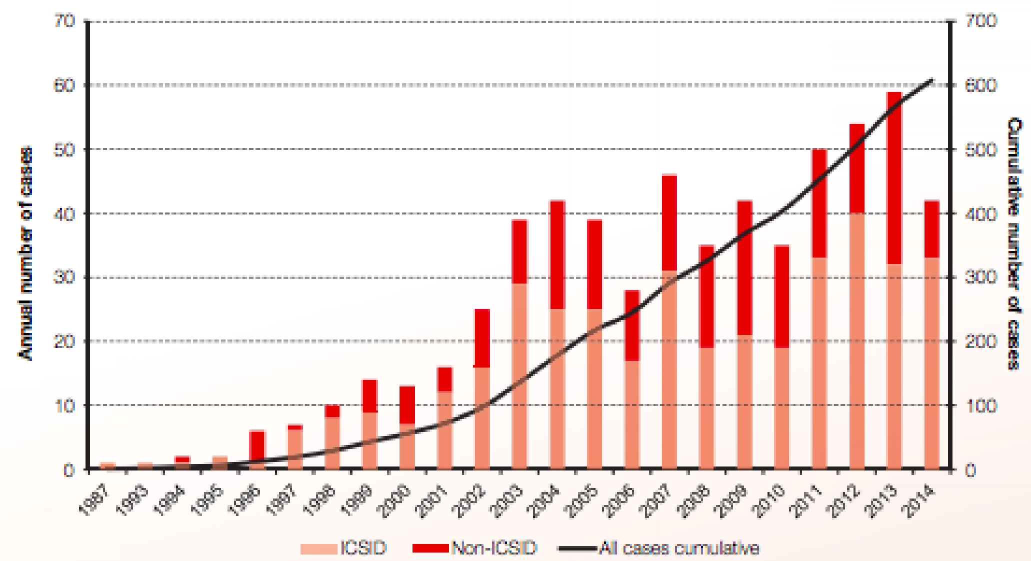
Mobil and Murphy Oil v. Canada (NAFTA):
The two oil companies challenged the update of guidelines on oil projects issued by the province of Newfoundland-and Labrador. The guidelines required the companies to support local economic development through expenditures on research, development and training programs. Even though the guidelines merely updated existing obligations, Canada lost. The companies had first tried to overturn the guidelines in the Canadian courts and lost, but won in the ISDS "corporate court," essentially getting a second bite at the apple—a bite a purely domestic company could not get. The companies won $17 million.

Metalclad v. Mexico (NAFTA):
A U.S. corporation sued Mexico after a local government refused to grant a building permit for a toxic waste facility. Local citizens, afraid the facility would pollute their water supply, had petitioned their local government to deny the permit, and their local government responded appropriately. Previously, the local government had also denied a similar permit request to the property's previous owner. Nevertheless, Metalclad won more than $15 million.

Lone Pine Resources v. Canada (NAFTA):
Lone Pine is challenging the province of Quebec's temporary moratorium on fracking under the St. Lawrence River. The case is ongoing and Lone Pine is seeking $250 million. However, to even bring the suit, Lone Pine appears to be taking advantage of a loophole that allows a company to sue its own government under ISDS as if it were the company of another party so long as it has "substantial business" in that Party. (This link indicates Lone Pine is a Canadian company, not a U.S. company http://www.lonepineresources.com/) This loophole also exists in the TPP.

For more information on ISDS:
https://www.tni.org/files/download/profitingfrominjustice.pdf
http://www.aflcio.org/content/download/138571/3647761/AFL-CIO_ISDSReport_5.pdf

Figure 1. Known ISDS cases, annual and cumulative (1987–2014)



Source: UNCTAD, ISDS database