



Secret TPP treaty: Report from Chairs of Environment Chapter for all 12 nations

WikiLeaks release: January 15, 2014

keywords: TPP, TPPA, treaty, asia, pacific, negotiation, environment, fisheries, biodiversity, climate change, trade, investment

restraint: This Document Contains TPP CONFIDENTIAL Information
MODIFIED HANDLING AUTHORIZED

title: Trans-Pacific Partnership Agreement:
Report from the Chairs for Environment Chapter

date: November 24, 2013

group: Trans-Pacific Partnership

author: Trans-Pacific Partnership Environment Working Group Chairs

link: <http://wikileaks.org/tpp-enviro-chairsreport>

pages: 4

Description

This is the confidential Chairs' report from the Environment Working Group of the Trans-Pacific Partnership (TPP) talks between the United States, Japan, Mexico, Canada, Australia, Malaysia, Chile, Singapore, Peru, Vietnam, New Zealand and Brunei Darussalam. The treaty is being negotiated in secret by delegations from each of the 12 countries, who together account for 40% of global GDP. The report was drafted by the Chairs of the Environment Working Group, at the request of the TPP Ministers and at the Chairs' own responsibility, and sets out the Party positions around the main areas of tension in the Environment Working Group, noting that compromises will be needed by all the Parties to reach a final agreement. The report accompanies the draft Consolidated Text made by the Chairs on the same date and details the disagreements between the Parties on this Consolidated Text. The report dates from the Salt Lake City meetings but before the December Singapore TPP Ministerial Meeting was prepared.



WikiLeaks

TPP ENVIRONMENT WORKING GROUP

Report from the Chairs and Consolidated Text for the Environment Chapter

1. As requested by TPP Ministers at their August 2013 meeting in Brunei, please find attached a consolidated text drafted by the Chairs of the TPP Environment Working Group in respect of the TPP Environment Chapter. In drafting this consolidated text, the Chairs have been guided by:
 - (a.) The state of the text at the end of the Brunei Round, as well as discussions that have occurred, both in plenary and in working groups, in each of the negotiating rounds in which the Chairs have participated. The text is based solidly on the ground established by the Parties over the course of this negotiation;
 - (b.) The views and concerns expressed by each Party during the bilateral meetings held with the Chairs during the working group sessions in Malaysia, Brunei and the United States; and
 - (c.) The perspective of the Chairs on ways to bridge some of the differences between the Parties on specific issues, drawing from its experience negotiating many of these kinds of provisions over the past decade.
2. The Chairs sought to prepare a consolidated text that is balanced, presents a package that encompasses compromises across all issues, and attempts to consider the interests and concerns of all TPP Parties. In doing so, the text has sought to resolve the three main tensions that existed within the Environment Working Group.
3. First, how best to balance the need for ambitious obligations in a trade agreement to protect and conserve the environment with the keen interest from some Parties to include substantive commitments to cooperate on specific topics. On this issue, the consolidated text sets out ambitious obligations while providing for flexibility and cooperation where helpful to assist Parties in implementing these obligations.
4. Second, how best to determine the appropriate role for this Agreement in addressing issues that are being dealt with or negotiated in other multilateral fora. The consolidated text provides a unique role for TPP Parties by setting out commitments that complement work underway in other fora, and avoiding obligations that may serve to overlap or duplicate, or even undermine, those issues under negotiation or addressed in other multilateral fora.
5. Third, recognizing that the dispute resolution provisions have been a particularly challenging issue, the text includes a credible approach, based on cooperation and collaboration to resolving potential disputes between the Parties, while ensuring a role for an independent third party to assist Parties to resolve the matter.
6. Nevertheless, and while the Chair sought to accommodate all the concerns and red lines that were identified by Parties regarding the issues in the text, many of the red lines for some Parties were in direct opposition to the red lines expressed by other Parties. It bears

emphasizing that it is these differences that have prevented the Environment Working Group from reaching agreement on all aspects of the Chapter.

7. While progress has been made since the Brunei meeting, these differences remain today. To reach agreement on the remaining Articles, it is clear that Parties will need to find a means to compromise. All Parties in this negotiation have already made many compromises, however, in reflecting on the status of the remaining issues in the Environment Chapter, it is clear that more compromises will be required to reach a final agreement.
8. With that in mind, and noting that the Articles on Objectives, General Commitments, Procedural Matters, Opportunities for Public Participation, Public Submissions, Corporate Social Responsibility, Voluntary Mechanisms to Enhance Environmental Performance, Cooperation Frameworks, Institutional Arrangements and Invasive Alien Species are agreed, please find below a summary of the status of the remaining Articles yet to be agreed:

SS.1 Definitions

- CL, PE, VN and MY oppose the inclusion of “provision thereof” in the chapeau of the definition while some other Parties cannot accept such a narrowing of the scope of coverage.
- CL opposes a reference to the multilateral environmental agreements in the environmental law definition, linking it to the obligations in the Chapter overall.
- CL opposes having a definition on statute or regulation because Parties are committing with respect to environmental laws at the central level of government only and is a cross-cutting issue.
- JP considers that additional elements are necessary to the language relating to equivalency in scope of coverage.
- Parties continue to discuss a mechanism for a dialogue on sub-federal environmental laws.
- MX is considering the elimination of the phrase “in the Party’s territory.”

SS.4 Multilateral Environmental Agreements

- This issue relates to how to address MEAs in this Chapter – one of the main tensions in this chapter.
- US proposes obligations to adopt, maintain, and implement measures to fulfill specific MEAs (CITES, Montreal Protocol and MARPOL) into the TPP enforceable through the DS chapter if failure to do so would affect trade or investment.
- AU, BN, CA, CL, JP, MX, NZ, PE, SG and VN oppose such incorporation in this way as they do not consider it appropriate to incorporate those obligations that have been negotiated in different circumstances and subjecting them to a dispute settlement mechanism in the TPP.
- VN, CL, MY, MX and PE do not support the reference in the footnote to Montreal Protocol, MARPOL and CITES to future protocols, amendments, annexes and adjustments to which it is a Party.

SS.12 Consultations/Dispute Settlement

- There is agreement amongst AU, BN, CA, CL, JP, MX, MY, NZ, PE, SG and VN on the consultation process to be followed, except for the timeframes before a request for the establishment of an arbitral tribunal can be made.
- The US considers the consultations process to be linked to the dispute settlement process that would potentially follow.
- With respect to the arbitral tribunal, this is another main tension in the Chapter. AU, BN, CA, CL, JP, MX, MY, NZ, PE, SG and VN can agree to the process outlined in the consolidated text while the US requires that the obligations in the Environment Chapter be subject to the same arbitral tribunal process as the obligations found elsewhere in the TPP. This includes the resort to the application of trade sanctions in cases where compliance with an arbitral panel ruling is not achieved.
- The working group has not yet reviewed the text related to the arbitral tribunal process. CL, VN, MX and PE consider that a violation of a commitment in this chapter should be in a sustained and recurrent manner and affects trade or investment to be submitted to the arbitral tribunal process. The US does not support this approach.

SS.13 Trade and Biodiversity

- MY, PE, VN and BN are seeking a reference to “derivatives” in the Article.
- US cannot agree to the Article as it is currently drafted because it is not a Party to the Convention on Biological Diversity.
- PE and MX proposed to include in paragraph 3 the approval and involvement of the holders of knowledge, innovation and practices of indigenous and local communities.

SS.15 Trade and Climate Change

- VN, PE and MY do not want a reference to fossil fuel subsidies in the Article.
- US and AU cannot agree to the Article as it is currently drafted.

SS.16 Marine Capture Fisheries

- CL, AU, VN, NZ, BN, PE, JP, SG, MX and CA advocate for the placement of the MARPOL Article in the MEA Article.
- CL, VN and MY do not support inclusion of provisions on subsidies for fishing without flexibility for sufficient transitional period and to small-scale fisheries.
- Discussions continue with respect to paragraph 4 and MY, NZ, AU and JP cannot agree to the text as it is currently drafted.
- VN does not support reference to MARPOL protocol of 1997 and proposed to add “which the Party accepted, taking into account the actual development situation of the Party.”
- Some Parties are working on language related to the provisions of Subsidies and IUU fishing. CL proposed a footnote for 6(a) incorporating the element of rebuilding plan.
- US proposed amendments to 6(a) with respect to “negatively affecting” and does not support the footnote proposed by CL.

- Pending VN and SG's confirmation on a possible compromise language related to paragraph 15(b).
- US position is that a robust outcome on marine fisheries is necessary to demonstrate flexibility on the 7 MEAs listed.

SS.17 Conservation

- US proposed obligations to adopt, maintain, and implement measures to fulfill CITES obligations into the TPP enforceable through the DS chapter if failure to do so would affect trade or investment.
- AU, BN, CA, CL, JP, MX, MY, NZ, PE, SG and VN are opposed to incorporating CITES into the TPP (same issue as MEAs above).
- US has proposed to obligate all TPP Parties to take measure prohibiting trade in wild flora and fauna taken or traded in contravention of a foreign law. AU, BN, CL, JP, MX, MY, PE, SG and VN cannot agree to the provision as drafted.
- AU, CL, SG and MX have presented an alternative to that provision, focusing on cooperation with respect to trade in wild flora and fauna taken or traded in contravention of a foreign law. US opposes this alternative.
- PE is seeking to limit the scope to CITES-listed species. US opposes this limitation.
- US position is that a robust outcome on Conservation is necessary to demonstrate flexibility on the 7 MEAs listed.

SS.18 Environmental Goods and Services

- Paragraphs 1, 4 and 5 are agreed.
- PE, VN, JP, MY and CL oppose paragraphs 2 and 3 as they are currently drafted.
- In order not to prejudge the outcomes of the goods and services market access negotiations, paragraphs 2 and 3 will be finalized once those market access outcomes are known.
- CL submitted an alternative proposal for paragraphs 2 and 3.