

Hank, Emma and the TPP

Hank: Emma, I'm hearing more about this TPP but I'm not sure what it is or why it's so important.

Emma: The TPP ... for Trans-Pacific Partnership ... is billed as a trade agreement ... think NAFTA on steroids ... but there's far more to it that's not being openly discussed.

It's been negotiated in secret for years and now President Obama and many members of Congress want to push it through before most Americans have a chance to understand and debate it.

Hank: Is that the 'Fast Track' I'm hearing about? What's that?

Emma: The Fast Track, or Trade Promotion Authority, is a power often granted by Congress to the President to negotiate trade deals and present them to Congress for an up-or-down vote, with limited debate or time for the public to weigh in.

Hank: Well that's a change; the White House and the Republican Congress actually cooperating on something.

Emma: As always, there are details. The Democratic leadership of the Senate (Senators Reid, Durbin and Schumer) have come out against Fast Track for the TPP, and House Minority Leader Nancy Pelosi has asked for changes in the current Fast Track bill.

Hank: So why are Republicans so eager to cooperate with Obama on TPP?

Emma: Not just Republicans but also Democrats. Part of the answer, I think, is in following the money. If you liked Citizens United you'll love the TPP.

Hank: You'll have to unpack that for me.

Emma: OK, let's back up a bit. In the first place, the majority of the TPP is not primarily a trade agreement. Only five of the 29 "chapters" are about what we might think of as "trade issues." Most of the chapters touch on copyright law, the freedom of the internet, food safety and the like.

Hank: How in the world can food safety be a trade issue?

Emma: Now we're getting to the heart of the matter. For one thing, any US ruling on, say, pesticides that provide greater protections than "international standards," whatever they may be, could be "illegal trade barriers."

The chief agricultural negotiator for the US is, or was, a former Monsanto lobbyist.

Hank: That sounds important but I'm afraid to say I don't know what or who Monsanto is.

Emma: Don't worry; Monsanto doesn't really want you to know who they are anyway, but you really can't avoid them. Remember the GMO labelling ballot measures in Oregon and Colorado

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... and all the money that seemed to come out of nowhere to defeat them? Much of that was from Monsanto, one of the largest producers of GMO seed in the world.

They were also one of the major suppliers of Agent Orange (dioxin) to the military during the Vietnam War.

Hank: Oh, now I remember! They make Roundup, too, right?

Emma: Just so. Recently the active ingredient in Roundup, glyphosate, was declared as “probably carcinogenic for humans” by the cancer research arm of the World Health Organization. Since Roundup was designed to work specifically with Monsanto’s GMO crops, it gets sprayed on some of your food.

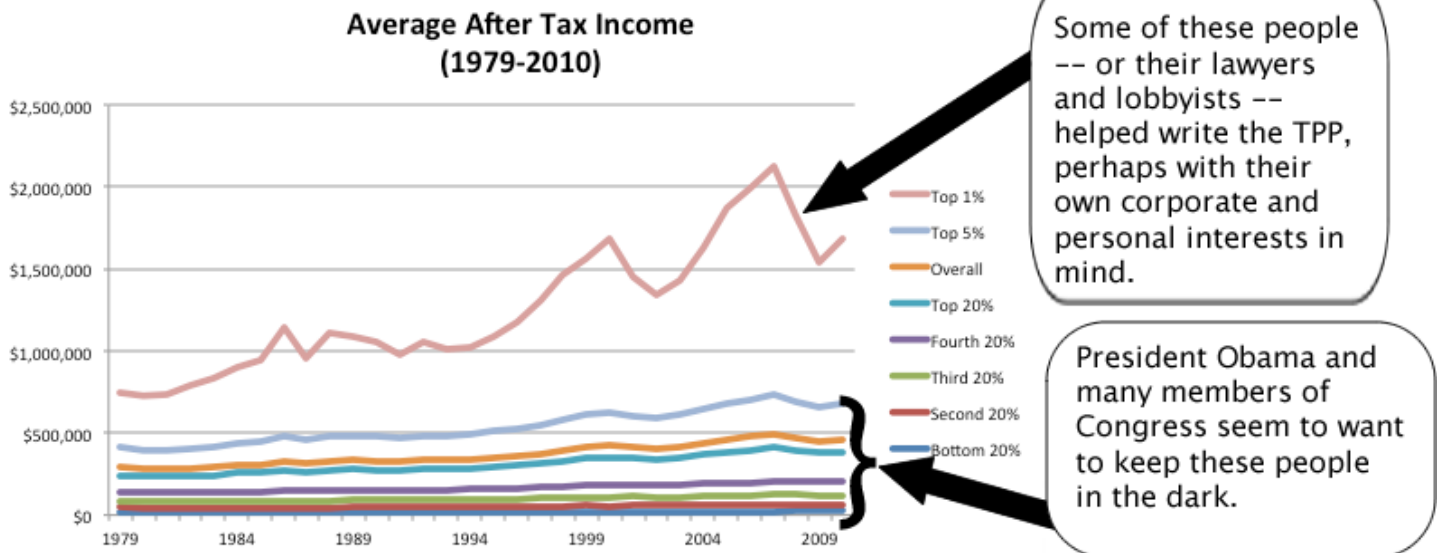
Monsanto disputes the study, but then it held that dioxin was safe, too.

Hank: So I guess that Monsanto doesn’t want you to know which foods are non-GMO and glyphosate-free.

Emma: That seems to be the case and why one version of leaked documents would prohibit countries from allowing food to be labelled “non-GMO.”

Hank: So who’s writing all these industry-specific rules?

Emma: Take a look at the chart and tell me what you think:



Main graph from inequality.org using Congressional Budget Office data; Commentary by Emma

Hank: Are you just bashing the well-to-do? Some of those folks have worked 16-hour days for their entire career. Why are you picking on them?

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Emma: I'm not talking about how much they make or have but about how they use their wealth and influence. It's very much like Citizens United, which allows wealthy donors to have an outsized influence on American politics.

Hank: Are you saying the Koch brothers are influencing TPP negotiations?

Emma: That wouldn't be surprising, but the fact is we may never know. Fitting right in with the secrecy with which the TPP has been developed, that's not part of the public record.

Hank: And public access is ...?

Emma: Currently limited to what has been leaked.

WikiLeaks has posted some parts of the draft treaty, and a few years ago the lead negotiator for Chile resigned, later warning his country-men and others that the TPP was dangerous.

There's plenty of detailed analysis of leaked documentation on line, but the Obama administration persists in keeping the TPP under wraps for now.

Hank: Well, what about Congress if they're going to vote on this?

Emma: I'm glad you asked. Senators, Representatives and their staff can read the text of the TPP in a secured room, leaving their cell phones outside. They can't have a copy of their own to study, and can't take notes. And ... it's illegal for those granted this limited access even to discuss what they've read.

As of today (May 8) only two Republican Senators will acknowledge that they've read the agreement, including the "living agreement" section which grants to the President and foreign countries to make some changes to the TPP even after it's been voted on. I know that Elizabeth Warren has read the agreement, but off hand I don't recall any other Democratic Senator who has made the same claim

In contrast, 600 US "trade advisors" ... think lawyers and lobbyists, like the guy from Monsanto ... from various industries have access to the document and the negotiators and can ask for specific language that favors their interests.

Hank: Reminds me of the Patriot Act, which most legislators signed without reading.

Emma: I'll cut Congress the tiniest bit of slack on that, given the special circumstances after 9/11. But the TPP has been in negotiation for years and the only reason to rush the vote is to avoid more of the details leaking and available for public discussion.

Hank: So I probably shouldn't expect anything like Ross Perot and Vice President Gore debating NAFTA on the Larry King show, with 16 million watching.

Emma: I think that's a safe bet.

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The main, perhaps only purpose of Fast Track seems to be to suppress a full national debate.

Hank: So that's what you meant by Obama keeping us in the dark, this concern over the Fast Track.

Emma: Exactly, because the alternative to Fast Track would be a fuller and longer debate in Congress and in public discussion.

That alternative, not currently favored in Congress, would also give Congress the ability to call for amendments and to approve or disapprove the TPP section by section.

Hank: And the problem with that is ...?

Emma: Well, first off some of the special interests may lose some or all of what they've been working behind the scenes for years to get and what they've expected to get based on experience with other trade agreements, like NAFTA.

But the biggest concern for Obama and many in Congress is probably that the whole deal ... with all of its special treatment for powerful interests ... will fall apart. But that's a risk that Obama and others accepted when they negotiated the draft agreement in secret.

Hank: OK, let's get specific; what's an example of "special interests" getting their way? And not just a hypothetical example, either.

Emma: Phillip Morris is suing the government of Uruguay (under a different but somewhat similar trade agreement) over particular aspects of its campaign to discourage smoking because the health costs from cigarettes are a serious concern there.

Uruguay says that its program has decreased smoking by at least one-third and, according to polls, the program enjoys wide support. The World Health Organization (WHO) has taken positive notice, as well.

Of course, Phillip-Morris is out to kill it.

Specifically, the company claims that the new smoking rules hurt their business in Uruguay and under the specific trade agreement that applies here, that's reason enough to sue for compensation and to shut Uruguay's program down.

This kind of lawsuit is called an "investor-state" dispute, by the way.

Hank: Can the government of Uruguay defend itself in its own courts?

Emma: Not in this case, nor under similar provisions in the TPP, which aren't decided by appointed and confirmed judges. The case will be decided by a three-member panel of lawyers from the International Centre for Settlement of Investment Disputes under binding arbitration.

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That panel may dismiss the complaint ... not all such disputes are settled in favor of companies ... or it may decide how much the nation of Uruguay owes Phillip-Morris for its audacity in promoting public health. I'm not sure of the details of this specific trade agreement, but if it's something like NAFTA or what we already know about TPP, Phillip-Morris may actually get the panel to force Uruguay to stop or greatly change its anti-smoking campaign.

So far, counting all trade agreements, corporations have forced tax payers in various countries to shell out \$3 billion, and another \$18 billion worth of claims are in the pipeline for NAFTA alone.

Hank: I guess the fact that they have "Investment" in their name is a big clue to where their sympathies lie.

Emma: You may be on to something, but at least Uruguay gets to pick one of the three members of the tribunal and selects, along with Phillip-Morris one of the others.

Still I think that's part of the attraction of TPP to major commercial interests and many in Congress. But it wouldn't take a law suit to have severely damaging effects on many aspects of life on Main Street.

Hank: This is getting interesting; how would that work?

Emma: By signing the TPP, the US would agree to have some provisions of the treaty become US law, in many cases overriding prior decisions of Congress or precluding some further actions of Congress or executive orders by the President.

Hank: What?! And Congress is going along with this?

Emma: Apparently. And this isn't just a detail of the Fast Track. Even a "non-Fast Track" approach by Congress would, by the very nature of the TPP, incorporate provisions of the agreement into US law unless very extensively amended by Congress, which would be unlikely in the best of circumstances.

Hank: But they'd be giving away the very power that they were elected to use wisely.

Emma: Under the Commerce Clause of the Constitution, Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States."

"Fast Track" is just a catchy way for Congress to say they're not interested in doing that part of their job.

Hank: Congress ... Constitution ... Hey, is the TPP a treaty?

Emma: The President and many in Congress aren't treating it as one, despite the fact that many provisions would override US law.

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Perhaps the reason for that is that a treaty would require a two-thirds majority in the Senate, rather than a simple majority in both chambers.

That might be enough to kill the TPP, which Obama and others really, really don't want.

Hank: Let me guess: there's big money at stake and Wall Street has taken notice.

Emma: That's putting it mildly. Some think that Wall Street lobbyists are writing provisions of the TPP ... which, you'll recall, will trump US law ... to undo parts of Dodd-Frank financial reforms passed in the wake of the 2008 financial crisis and take the US financial regulatory scheme to back where it was before the 2008 crisis and frustrate future reform efforts.

For example, the TPP would forbid the US, among other signatories, from banning the very kind of risky financial products that led, for example, to the downfall and bail-out of insurance company AIG.

The AIG board has brought a suit against the Federal government for being too stingy in its \$182 billion bail-out. They want \$40 billion more and are suing for it under US law in US courts.

That's bad enough, but the TPP ... as in the Phillip-Morris/Uruguay case ... would provide that damages, if any, would be determined by the panel I just mentioned. Unlike our judicial system, there is no possibility of appeal.

Under the TPP, a company doesn't have to prove damages, just show (somehow) that some government policy might harm their future profits.

Hank: And that will be decided by the group with "Investment" right in its name, correct?

Emma: Just so. There are other sweetheart deals in the TPP, including a provisions that would, for example, prohibit the government from any "too big to fail" regulation and, just in case, also prohibit any tax on Wall Street "speculations."

You could think of it as a small ... 0.5% or less ... sales tax of stocks and bonds. Individuals and pension funds would be their taxes refunded to them.

Whether you like that particular idea or not, my understanding of that provision of the TPP means that US and foreign banks, perhaps hedge fund managers and high-frequency traders, would have a direct role in determining US tax policies and prohibiting some regulations that might be designed to address the very problems at the root of the 2008 crisis and providing new revenue to the Federal government.

This alone is a huge give-away of national sovereignty, which is no doubt one of the reasons Obama is trying very hard to keep this secret.

Hank: Yikes! What else?

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Emma: Let's take environmental protection. One US chemical company sued Canada because it had banned the import of MMT, a gasoline additive and suspected neurotoxin.

The company won "damages" since the Canadian ban affected their bottom line. In addition, Canada was forced to revoke the ban.

This is a clear case of private profits winning over the health and environmental concerns of 35 million Canadians. There's no guarantee that the same thing won't happen to 322 million Americans.

Also under NAFTA, the a US fracking company has sued the Canadian government in an "investor-state" dispute over the moratorium ... not a ban ... on fracking beneath the St. Lawrence River in order to have time to study the matter.

The company wasn't happy with the delays and, as of this January, is hoping that the international panel of trade lawyers will grant them \$250 million.

The TPP, of course, has similar provisions, but I'm mentioning these examples since we already know how they turned out under NAFTA.

Hank: So the oil and gas industry gets a piece of the pie, too?

Emma: Actually the biggest piece. Under the various "free trade agreements" with these "investor-state" cases, 85% of all settlements have been related to gas, oil, mining and other environmental and natural resource issues.

Hank: This is too much. So, under agreements like NAFTA and the TPP large corporations can shut down a health program in Uruguay, force Canada to resume importing a suspected neurotoxin, and keep states or entire countries from labelling food "non-GMO."

Emma: Yes, that and much, much more.

Hank: How about just a high-level view of some other issues?

Emma: Sure; it's overwhelming for me, too.

The TPP would grant "Big Pharma" powers to force countries to extend the time before a drug would be considered generic ... and thus probably cheaper.

That means higher drug and Medicare costs in the US, and the effects in poorer countries may well be comparatively worse.

Hank: I think I remember that the pharmaceutical companies got a sweet deal when Bush introduced drug coverage for Medicare.

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Emma: Yes, the Bush administration stipulated that the federal government can't negotiate for better prices, as is usual in other cases.

But it's not only Bush. Remember Obama's promise to have negotiations for "ObamaCare" broadcast on C-SPAN?

Hank: Funny, I don't remember that happening!

Emma: It didn't. But White House staff had several private meetings with representatives from the pharmaceutical industry and finally Obama himself hosted another private meeting with, among others, the chief lobbyist for the PhARMA trade association and the CEO of drug giant Pfizer to hammer out a deal.

Hank: Let me guess; this doesn't get any better under the TPP.

Emma: Worse, in fact.

Some leaked documents contain new rules that could restrain any efforts by national governments to limit the increase in drug prices, itself a major contributor to the budget deficit because of the importance of pharmaceutical costs to Medicare and the budget.

So, in effect, the TPP would also limit Congress' ability to manage the nation's finances and budget.

Hank: It appears that the TPP seems to be only the latest development in a long-term pattern.

Emma: That's probably no surprise to many, but most people don't yet understand the very damaging role that TPP would play on this larger chessboard.

And most people know even less about the TPIP (Transatlantic Trade and Investment Partnership), a very similar negotiation underway with Europe that is already stirring up protests there ahead of its anticipated completion next year.

Hank: And ...?

Emma: The TPP would significantly increase copyright protections to the point of endangering traditional understandings of "fair use," which can have a chilling effect on public discussion, especially on the internet.

Language in the TPP could also be used to crack down on journalists and whistleblowers.

Hank: That could put a real damper on independent citizen media.

Emma: There's more, but I'll end with and emphasize labor's concerns. While companies would have great powers under the "investor-state" provisions of the TPP, there are no similar powers for labor.

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Phillip-Morris can sue the country of Uruguay, but I haven't yet found language for workers to sue for better pay and safer working conditions.

Hank: I was skeptical at first, but now I'm not happy about any of this, and I'm sure there's more bad news where this came from.

What can I do?

Emma: There are two important avenues of action.

One of our major weapons against the organized greed behind the TPP is knowledge, the very knowledge that Obama and much of Congress don't want us to have.

So please share what you've learned and perhaps even read up on particular aspects of the TPP that strike closest to home.

That knowledge empowers us for the next course of action, which is to tell your Senators and Representative what you think of the TPP now. Senators are always important, but those who can count votes think that we have a better chance of stopping Fast Track in the House, so don't ignore your Representative.

Hank: Yeah, but what do I say?

Emma: For now, stick to talking about defeating Fast Track in order to enable the full and informed debate this issue and our country deserve. That, and not the TPP itself, is the issue currently before both houses of Congress.

It's best to call your legislators, and better yet to visit their offices, perhaps with a few friends, though that's pretty hard for most people.

Please don't think that signing a mass petition on the internet is any substitute for direct contact. That's just too easy and legislators tend to discount or ignore those. If you care enough to ask your legislator to defeat Fast Track, care enough to call.

And when you do call, be polite, to the point, polite and "make the ask." Ask if your legislator already has a position on the TPP.

If they've already declared against Fast Track, as more and more are doing, please give them your heartfelt thanks; they deserve it.

If they're undecided or have already taken a position in favor of Fast Track, you may want to use one of the topics we've discussed that is most important to you to explain how important it is that they instead oppose FastTrack.