The devil in the TPP details

The biggest free trade pact in history was struck last week after years of tough negotiations involving 12 nations spanning Asia and the Pacific. Notably, it is the first-ever deal involving two of the world's biggest economies: the United States and Japan.

The Trans-Pacific Partnership (TPP), covering 40% of world trade in a market of 800 million people, still has a long way to go as it must be ratified by the legislatures of all participating countries. That will be no easy task as criticism of the deal has been fierce.

For a start, the TPP is not a conventional trade pact dealing only with goods, tariff barriers and import-export quotas. It also touches on contentious issues including intellectual property rights (IPR) and intervention in sovereign regulation. The US-led agreement is also seen as overly friendly to large corporations.

For instance, members must align their laws almost identically with the US Copyright Term Extension Act -- also known as the "Mickey Mouse Protection Act" because of years of lobbying by Disney. The agreement mandates copyrights in all member states to last for the life of the creator and for 70 years after death.

New Zealand already has a 50-year protection term and its government estimates that extending it by 20 years would add US$55 million a year in costs for businesses and consumers. That would outstrip the other benefits gained from the TPP.

Even more contentious is a proposal by the US and Japan, under which TPP members "shall make patents available for inventions for plants and animals". This could threaten small farmers and biodiversity in developing countries while benefiting only large corporations.

Drugs could also become more expensive under provisions that would extend clinical data exclusivity and block competition from affordable generic drugs.

In the United States, huge pharmaceutical companies are already very well protected from "biosimilars" or generic versions of biologics, which are more affordable to the mass market. The protection period starts after Food and Drug Administration (FDA) approval and lasts for 12 years.

TPP members are expected to adopt the same extensive protection, though only for 5-8 years, and it undoubtedly will drive up prices. Countries without well-developed pharmaceutical industries will suffer and public health could be compromised in countries such as Vietnam, Peru, Malaysia and Mexico.

Also controversial is the provision concerning the free flow of information. In theory this should benefit individuals and companies, but the mandate under the TPP could be a double-edged sword that undermines the data-protection laws of some member countries.

Australia, for instance, has expressed concern that personal data could be exposed to looser privacy laws offshore. Current Australian law requires electronic health records to be stored onshore in Australian data centres.

The Investor-State Dispute Settlement (ISDS) regime of the TPP has also raised eyebrows. Dispute settlement has been central to trade pacts for decades, allowing foreign investors to legally challenge governments -- but not vice-versa -- outside the courts of the country where the investment is made.

Dispute settlement provisions are necessary to protect companies against expropriation and discrimination by governments, acts that are not uncommon. Not many cases go to international arbitration, but lately some giant corporations have been using such provisions as a back door to boost sales.

For example, a mining company successfully sued Canada for not granting investment permission because of environmental concerns. The tobacco multinational Philip Morris is now suing Australia and Uruguay for passing tough tobacco laws.

Under the TPP, it appears that corporations will have even more opportunity to use the ISDS regime to further their business aims.

Although the TPP remains only a broad agreement and the devil is in the details yet to be concluded, it is worth sounding a note of caution that parts of the pact could spell trouble for some members.

The White House, of course, is highlighting the harmonisation of international standards such as International Labor Organization rules, internet liberalisation, conservation and action against wildlife smuggling. It has said less about potential windfalls for Big Pharma that could compromise public health and wellbeing.

The TPP members range from the most advanced nations to developing ones with populations up and down the wealth pyramid. Having to buy pricier medicines or face restrictions on planting crops will not do the Bottom of the Pyramid any good.

Developing countries must remain alert and take cautious steps in regard to any possible damaging consequences under future agreements, given the broad developmental gaps among member countries.

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