



# Unions Demand Fair Trade Now!

TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

REGULATORY COHERENCE

Unions have long maintained that trade agreements should not limit or constrain a government's ability to legislate and regulate to promote and protect the health, safety, and general welfare of its citizens. Indeed, unions believe this is one of government's primary functions. With respect to public interest regulation and legislation, trade agreements should be a force for progress, rather than a vehicle for downward harmonisation and denigration of appropriate rules for health, safety, environmental sustainability, and economic justice. Unions are deeply concerned that the Trans-Pacific Partnership Free Trade Agreement (a.k.a. the Trans-Pacific FTA or TPPA) will provide yet another venue for global corporations (and governments acting on their behalf) to lobby for weaker regulations. Working families no matter where they live simply cannot afford to have their workplace, food, and product safety become a matter of voluntary compliance. Important regulations on matters related to domestic public policy priorities must not be prevented or weakened by global corporations or by the influence of governments other than one's own.

### The Direction Ahead: Regulatory Impact Analysis?

Although the negotiating texts of the TPPA are secret, the TPPA is likely to require parties to use so-called "Regulatory Impact Analysis,"

or RIA, in developing all of its regulations. RIA has been on the forefront of the neo-liberal trade agenda and APEC has spent considerable time promoting the idea. According to the U.S. Government, in a March 2011 presentation to APEC stakeholders, RIA "assesses the anticipated consequences of a regulation and estimates associated benefits and costs." While this sounds innocent enough, the truth is that RIA focuses more on the "burden" to business than the public good to be achieved. According to a private sector presentation to APEC stakeholders, RIA improves the "cost-effectiveness" of policy decisions and reduces "unnecessary regulations". But unnecessary regulation is in the eye of the beholder. So long as regulatory agencies are open to "capture" by the interests being regulated, too many regulations will be deemed "unnecessary", and innocents will suffer needlessly from adulterated foods, unsafe workplaces, and dangerous consumer products. This is particularly a risk in areas of regulation where benefits are difficult to quantify such as labour and environmental issues.

RIA measures its success by reducing the number of regulations proposed without ever addressing the unmet need to adequately protect the public from various dangers. The U.S. has adopted the RIA model and apparently counts among its successes the failure to regulate silica dust. In the U.S., exposure to crystalline silica kills some 200 workers each year and causes new cases of silicosis in as many as 7,300 workers, mostly in the construction field. While silicosis is incurable, it is also preventable but American workers continue to wait. This is not a regulatory regime that should be exported to and imposed upon the U.S.'s trading partners, particularly developing countries in which civil society

organisations cannot match the resources that global corporations have to influence the regulatory process. Moreover, the information provided in RIAs could be used by investors to sue governments in international tribunals under the investor-state settlement process proposed for the TPPA. Investors would be able to turn these analyses against governments, forcing them to pay large amounts in "compensation" for the regulation. Trade agreements, including the WTO, have already been used to attack public interest regulations with respect to such issues as tobacco control, labelling of genetically-modified foods, recycling standards, and standards to prevent BSE ("mad cow disease") from entering the food supply.

### Bottom Line: The Ability to Regulate is a Sovereign Right

RIA is not a model that works for workers or anyone concerned about environmental, health, and similar standards. A trade agreement is not the appropriate place to develop domestic regulatory mandates. This should be retained as a sovereign right. Should the current neo-liberal deregulatory trend ever fall out of fashion (as it did a century ago in many countries including the U.S. when scandals over tainted milk, meat, and other products led to the creation of the Food and Drug Administration and a host of laws promoting clean and pure foods), the U.S. and every other TPPA nation would be unable to modify its regulatory regime without persuading all other TPPA parties to change their approach or withdrawing from the agreement.