

Executive Summary

How TPP Critics Muddle Facts, Fictions, and Unfounded Fears: A Point-by-Point Analysis

By Nigel Cory and Stephen Ezell

Not all criticisms of the Trans-Pacific Partnership (TPP) should be treated equally. In fact, the majority are misguided, overstated, or just plain wrong.

This report analyzes key criticisms that have been levied against the agreement, assessing whether they are valid or invalid. It finds that some of the TPP's provisions could have been strengthened—but, on the whole, the agreement represents a significant step forward in establishing competitive, innovation-enabling, market-based terms of trade and commerce throughout the Asia-Pacific region.

- ✗ **Invalid Claim:** The TPP's dispute settlement process for investors making claims against states is an attack on national sovereignty.
Fact: The settlement mechanism for investor-state disputes cannot force states to change laws, only to pay monetary damages. The TPP sets a common, higher-standard approach to protect investors against some fundamental risks, while including explicit language underscoring the governments' right to regulate.
- ✗ **Invalid Claim:** The TPP's intellectual property rules only benefit big corporations at the expense of consumers and workers.
Fact: Intellectual property protection is essential to firms—and their workers—throughout an economy, whether large or small, traditional or high-tech, or goods- or services-based.
- ✗ **Invalid Claim:** The TPP's technical protection measures, commonly used to protect copyrights in gaming consoles and in online platforms for movies, music, and games, are an attack on innovation, fair use, and the freedom to tinker.
Fact: Technical protection measures facilitate innovation in the digital economy. Furthermore, the TPP includes provisions to manage instances where there are legitimate cases for circumventing this protection.
- ✗ **Invalid Claim:** The TPP is a threat to free speech by not exporting the U.S. "fair use" doctrine.
Fact: The TPP uses the same criteria to define fair use that are already in place around the world, because with different legal systems, there is no one-size-fits-all legal approach.
- ✗ **Invalid Claim:** The TPP's rules prohibiting forced software source code disclosure will impede governments' ability to regulate companies.
Fact: The TPP's rules focus on preventing cases where governments ask for source code disclosure upfront as a mercantilist condition of entry, and contains exceptions to allow for scenarios where source code is disclosed as a matter of business after entry, such as for regulatory concerns.

- ✗ **Invalid Claim:** The TPP turns Internet service providers (ISPs) into copyright police.
Fact: There is nothing in the TPP that requires ISPs to monitor their systems for copyright infringement. Instead, the TPP sets out how countries can provide a safe harbor from liability for ISPs when their users infringe content. The TPP actually makes this protection contingent on there being no active network monitoring.
- ✗ **Invalid Claim:** The TPP's trade secret protections are unnecessary, will restrict entrepreneurship and innovation, and will be used to target whistle blowers and journalists.
Fact: Trade secrets need protection because they are both highly valuable and increasingly digital, and thereby at heightened risk of cyber theft. These provisions are strictly focused on trade secret theft in commercial scenarios, where there is commercial or financial gain, with limitations and exceptions that protect public interest disclosures by whistleblowers.
- ✗ **Invalid Claim:** The TPP is a threat to privacy because it allows "cybersquatters" to be unmasked.
Fact: The TPP requires common-sense rules to address cases whereby people acting in bad faith seek to profit from registering domain names that are the same or similar to well-known trademarks—a form of piracy and fraudulent behavior.
- ✗ **Invalid Claim:** The TPP is a threat to privacy as rules to protect cross-border data flows are an attack on privacy.
Fact: Data does not need to be stored locally to be secure or to maintain privacy protections. Companies that have legal nexus in a country are subject to its privacy and cybersecurity laws and regulations—moving data overseas, or storing it elsewhere, does not give the company a pass to ignore a nation's laws.
- ✗ **Invalid Claim:** The TPP will inhibit patient access to medicines and make them unaffordable.
Fact: The TPP will have virtually no impact on access to the vast majority of the world's essential medicines, as more than 92 percent are already off-patent. The TPP will instead help preserve a biomedical innovation ecosystem that enables the creation of new drugs, thereby preserving access by ensuring their existence.
- ✗ **Invalid Claim:** The TPP does not do enough to protect workers and the environment.
Fact: The TPP establishes the strongest protections for workers and the environment in any U.S. trade agreement ever signed and makes these provisions fully enforceable.
- **Partly Valid, But Irrelevant Claim:** The TPP was negotiated in secret.
Fact: Trade agreements need to be negotiated privately if countries are to best advance their interests. Moreover, the U.S. Congress is the democratically elected body that ultimately decides whether the agreement is in the United States' interest or not.
- ✓ **Valid Claim:** The TPP does not do enough to stop currency manipulation.
Fact: The TPP is a missed opportunity to put rules in place rules to limit countries' ability to use currency intervention as a viable trade and economic policy tool to shift advantage in their favor.

At stake in the debate over the TPP is the very future of globalization: Will robust economic integration and trade liberalization continue, or will opponents halt or reverse its progress? We need to continue moving forward and passing the TPP will advance that goal.

To read the full report, visit itif.org/tpp.