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Leaked trade papers expose EU failure to uphold transparency and environment standards

After much public controversy surrounding negotiations for EU trade agreements with the US and Canada, the European Commission and European governments [pledged](#) to improve transparency and uphold environmental standards in trade policy. But a leak of documents related to a looming trade deal with Japan (known as JEFTA) has revealed the EU's failure to live up to these promises.

The leaked documents -published by Greenpeace Netherlands on trade-leaks.org - cover 205 pages of previously undisclosed chapters of the deal. They reveal the EU's failure to promote high environmental standards through trade policy. The documents are mostly dated between late 2016 and early 2017, just ahead of the 18th round of negotiations.

Negotiators hope to wrap up the new deal over the summer. If it is concluded, the agreement with Japan could be the EU's biggest ever trade deal, covering a trade volume twice as large as the EU-Canada deal (known as CETA). Like CETA, JEFTA raises significant concerns for environmental protection.

The Commission and the Council (which is the body that represents national governments in the EU) have been markedly less transparent than during talks for the now defunct EU-US trade agreement (known as TTIP).

A step back on transparency

As with other trade agreements, like CETA, public scrutiny of the negotiations is virtually non-existent. While the Commission set up special reading rooms for elected politicians, offering severely restricted access to TTIP documents, it has not done so for JEFTA.

The Commission has also backtracked on its policy of disclosing the EU's negotiating positions: during TTIP talks, it published its negotiation position on 24 chapters of the agreement. Only two JEFTA chapters have been released.

Illegal timber risk

One example of the Commission's inertia on environmental protection is related to the trade in illegally logged timber. Provisions on timber trade in JEFTA are weaker than those Japan agreed to in the controversial (and now floundering) Trans-Pacific Partnership agreement (known as TPP).

In TPP, Japan agreed to *"adopt, maintain and implement laws..."* and to undertake an extensive range of activities in order to tackle the illegal trade in wild flora and fauna, illegal logging and associated illegal trade. The leaked JEFTA text only goes so far as to ask Japan to *"recognize the importance"* of the issue, with vague exhortations to *"encourage conservation"*, *"contribute to combating illegal logging"*, and *"exchange information and share experiences"*.

Japan is the largest importer of wood and plywood in the world, and a major market for illegal timber from Malaysia, Indonesia, China, Russia, and even from the EU itself (from Romania as a recent [report by the Environmental Investigation Agency](#) shows). It is the only G7

country that does not have sector-wide regulation to prohibit imports of illegal timber, but which relies only on toothless voluntary measures.

Given the scale of illegal timber imports into Japan, the weak language in JEFTA threatens to exacerbate illegal logging in many countries where forests are not effectively protected. It also contradicts the EU's own efforts to mobilise countries, like Japan, to put in place national legislation to combat illegal logging and related trade, and may jeopardise plans to conclude agreements on forest protection with other countries, particularly in Asia.

The [sustainability impact assessment for JEFTA](#) warns that the “*main environmental impacts [...] for both the EU and Japan will lie in the countries from which they import their timber*”. It also says that “*Japan’s failure so far to effectively control its imports of illegal timber has arguably had an inhibiting effect on the negotiations between the EU and Malaysia on a Voluntary Partnership Agreement*”.

According to a recent UNEP-INTERPOL [report](#), illegal logging tops the ranking of environmental crimes, with an estimated annual value of \$50-152 billion. Interpol estimates that illegal logging accounts for 50-90 per cent of all forestry activities in key producer tropical forests areas.

Whaling

The leaked documents also show that the Commission has ignored calls from the [European Parliament](#) to include the issue of whaling in trade discussions. Japan is one of the three remaining whaling nations in the world and the only country still hunting whales outside of its own waters.

The EU has repeatedly condemned Japan for its practices, but all the Commission has done to represent its position on whaling in trade negotiations with Japan is a largely [meaningless statement](#). The statement refers to the Trade and Sustainable Development chapter as “*an additional platform to foster dialogue and joint work [...] on environmental issues*”. Yet, the chapter does not even include a commitment for the EU and Japan to cooperate, much less any mention of whaling.

The chapter merely states that “*[e]ach Party recognises the importance of ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which the Party is a party, notably the Convention on Biological Diversity (CBD) and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*,” and that they would “*exchange information and consult with the other Party*” on relevant issues.

CITES prohibits the trade in whale meat and recognises the protected status of whales as endangered species. It does not, however, regulate whaling. The International Whaling Commission (IWC) is widely recognised, including by CITES, as the responsible body for the conservation and management of whales and the regulation of whaling. Yet, the Trade and Sustainable Development chapter of JEFTA contains no reference to the IWC.

Investment tribunal

Provisions in the EU-Japan agreement allowing corporations to sue sovereign governments to protect their investments are also weaker than the already low standards in CETA.

The leaked text on investment states that a state’s “*right to regulate*” is limited to adopting “*measures necessary to achieve legitimate policy objectives*”, begging the question as to what is considered “*legitimate*” and who gets to decide. This wording widens the scope for foreign investors to sue governments over regulation that may affect their profits. By contrast,

CETA provisions, which are also problematic, state that “*Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives*”. Adding the word ‘*necessary*’ weakens the right to regulate in the public interest.

The language in the leaked JEFTA draft would also allow any corporation to establish a mailbox company in Japan and use that to sue the EU or a national government.

Other weaknesses

Both CETA and JEFTA lack concrete, binding commitments on environmental, sustainable development and labour issues.

There are no penalties for breaches of sustainable development provisions, beyond a report from ‘experts’ to address non-compliance. While the EU and Japan state that they recognise the importance of cooperation on trade and investment related aspects of environmental and labour policies, they fall short of committing to cooperate (the text only says they “*may cooperate*”).

The language in much of the sustainable development chapter is vague and there are so many qualifiers to statements about the right for states to take action under multilateral environmental agreements, such as the Paris climate change agreement, that the commitments are effectively rendered toothless. This creates serious legal uncertainty about the deal’s impact on measures taken under multilateral agreements.

The EU and Japan’s reaffirmation of their commitments to combat climate change is also largely meaningless, as it is contained in the trade and sustainable development chapter of the agreement, which has no enforcement mechanism.

Japan, like the EU, has been unsuccessful in invoking the precautionary principle [1] in WTO disputes. It is surprising that seemingly like-minded parties have not safeguarded this principle in measures related to health and food.

Note:

[1] The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with high levels of protection.

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