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Trans-Pacific Partnership at APEC: What End Game? (No End in Sight...)

The heads of state of the 12 nations involved in Trans-Pacific Partnership (TPP) negotiations meeting on the sidelines of the Bali APEC Summit are expected to announce again that the outlines of a TPP deal have been achieved. But wait, that was the story pitched after a similar meeting at the Hawaii APEC summit in 2011. (USTR Release: On November 12, 2011, the Leaders of the nine Trans-Pacific Partnership countries ... announced the achievement of the broad outlines of an ambitious, 21st-century Trans-Pacific Partnership (TPP) agreement...) Until recently, USTR Michael Froman was declaring that the TPP was in its “end game.” Except:

- There is no text agreed for major swaths of at least three of the pact’s 29 chapters.
- There are multi-year deadlocks on a long list of controversial “behind the borders” issues in a dozen *other* chapters – one chapter has 300 “brackets.” (Brackets mark disputed text.)
- There are no deals on any of the controversial market access issues -from sugar and dairy to textiles/apparel and autos, in part because the most basic question remains contested: how will the TPP relate to the more than 30 bilateral trade pacts already existing between the parties?

And, as details have leaked out about the draft texts that have emerged from three years of extremely secretive negotiations, political opposition is building in several TPP countries among parliamentarians, powerful professional associations, business sectors, unions and the public. Signatory countries would be required to conform all of their domestic laws to the TPP terms. And, only five of the pact’s chapters cover traditional trade matters. The rest would set rules on patents and copyright, medicine pricing policies and health care, financial regulation, food safety, immigration visas, government procurement, land-use, energy policy and more.

Check List: Were These Controversial TPP Issues Suddenly Resolved*?

Entire patent section of IP chapter and text on medicine pricing rules both deadlocked

A U.S. proposal that would deliver on Big Pharma’s demands for extended patents, data exclusivity and other monopoly powers that raise medicine prices has faced unwavering multi-year opposition by most other TPP countries. The entire patent section of the IP text is in brackets. In another chapter, an Annex cynically dubbed “Annex on Transparency and Procedural Fairness for Healthcare Technologies,” is also deadlocked. This text would allow Big Pharma to challenge the decisions of doctors and pharmacologists who determine the cost-saving medicine formularies of countries’ healthcare systems. These issues have become a major political liability in numerous TPP nations.

Deadlock over enforceability of labor rights

The U.S. seeks labor standards that are enforceable on equal terms with the pact's other provisions. Most TPP countries oppose enforceable labor standards altogether.

Environment chapter at an impasse

The text still has 300 brackets - connoting text that is not agreed, which is most of the text.

Deadlock over the State Owned Enterprises (SOE) text

To start with, there is no agreed definition of SoEs! The U.S. has proposed disciplines on SoEs forbidding the use of government resources to subsidize SoE activities within TPP nations. A sizable bloc of nations opposes the U.S. text absolutely. Recently Australia tabled an alternative text altogether. The result: this text is all brackets and no agreement.

United opposition to the U.S. demand that TPP ban the use of capital controls

With the IMF now endorsing the usage of capital controls as a legitimate policy to avoid floods of speculative capital that cause financial crises, it is not surprising that there is united opposition to the unbending U.S. demand that TPP include a ban on countries' use of various common-sense macro-prudential measures, including capital controls and financial transaction taxes.

Deadlocks over various aspects of controversial "investor-state" private corporate enforcement of TPP

Australia's newly-elected conservative government has reiterated that it will not be bound to the investor-state enforcement system, which elevates individual corporations to equal status with sovereign nations in order to enforce privately a public treaty by demanding compensation from governments before panels of private-sector attorneys for government actions that undermine expected future profits. Japanese Prime Minister Abe's Liberal Democratic Party parliamentary majority has set as a condition for Japan's TPP participation that the deal not include investor-state enforcement. Other TPP nations oppose the U.S. demand that government natural resource concession, private-public-partnership utility management contracts and procurement contracts be subject to such extra-judicial processes. Key text remains in brackets with respect to both the substantive rights which investors would be granted and the enforcement system.

Negotiations on sensitive Market Access issues not even started

Japan's parliament has listed five "sacred" commodities – rice, beef and pork, wheat and barley, sugar and dairy - that it demands be excluded from TPP rules zeroing out tariffs. Other TPP countries insist that no sector can be excluded. The rules of origin – how much of a product's value must come from TPP countries – have not been agreed for sensitive sectors such as apparel/textiles, autos and more, so actual tariff-cutting negotiations have not started on these products. Battles over sugar, dairy and more remain unresolved.

Impasse on Copyright Rules

Hollywood and recording industry-inspired proposals to limit internet freedom and access to educational materials, to force internet providers to act as copyright cops, and to cut off peoples' internet access have triggered public outrage and led to a negotiation stalemate. There is entrenched disagreement about whether copyright should be able to keep works of art and literature out of the public domain 70 years after death of the author, with no resolution in sight.

□ Negotiations on Currency Disciplines Not Even Started

Despite bipartisan demands in recent weeks by 60 U.S. Senators and 230 Representatives that TPP include disciplines against currency manipulation, talks on the subject have not even begun.

*** And, that's just a sample of the issues that are raising opposition in both the negotiations suites and TPP nations' streets...**