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## New Leaked TPP Documents Reveal Daunting Obstacles for Obama's 2013 Deadline to Complete the Deal at Ministerial Meeting's Midpoint

### ***U.S. Isolated on Outrageous Demands that Nations Alter Policies on Medicine Prices, Internet Freedom, Financial Regulations; Congressionally-Demanded Disciplines on State Owned Enterprises, Enforceable Environmental Standards MIA***

WASHINGTON – The Obama administration's do-or-die 2013 deadline for the Trans-Pacific Partnership (TPP) came into question at the midpoint of closed-door negotiations underway in Singapore, as newly-leaked documents show deep disagreement between Washington and its prospective TPP partners on key aspects of the pact – as well as concerns by a government involved that missing yet another deadline could undermine the process.

With TPP talks shrouded in intense secrecy, the leaks provide the clearest view into the range of sensitive “behind the borders” issues that have spurred growing public opposition to the sweeping agreement in some participating countries. The documents also reveal U.S. negotiators pushing an agenda in line with American corporate interests on a range of issues, including expansive intellectual property rights, limits on financial regulation and expansive new investor rights to demand compensation from government over policies they claim undermine expected profits.

“Before entering into specific detail in some areas of negotiation, it is noted that the scenario for Singapore seems uncertain given the number of outstanding issues that still remain... The aforementioned, even leaving aside the more complex issues (IP, SOEs and Environment), demonstrates a situation that makes it very difficult to think of a complete closure in December,” according to one leaked memo, which had been prepared by a member nation in advance of the ministerial-level talks. “Some suggested the need to prepare different scenarios, in order to not suffer surprises that affect the process. This involves being prepared for a partial closure scenario or even a failure in December...”

The Huffington Post broke the news about the leaked [memo](#), posting it and a [chart](#) showing the positions of each country on scores of unresolved issues. The documents reveal that many Obama administration demands have serious consequences for member nations and their populations – including higher drug prices, vastly extended copyright terms, tough new Internet restrictions similar to the unpopular Stop Online Piracy Act (SOPA), and curbs on financial

regulation that face widespread rejection from other TPP countries as well as stiff opposition in the U.S. Congress.

“This leak guts the sense of inevitability about TPP that the negotiators have been so relentlessly building both because it shows, thankfully, how far from agreement the countries are and it puts people in all of the involved countries on notice about just how dangerous this deal would be for them,” said Lori Wallach, Director. “Having these documents released also puts the kibosh on the usual triumphant announcements that follow each of these high-level TPP meetings regardless of what actually happened in the talks.”

The leaked documents reveal that, going in to the Singapore talks, there were 119 contested issues in the TTP draft Intellectual Property chapter. The United States has been largely isolated in pushing an agenda favorable to large pharmaceutical firms, including extended patents, data exclusivity and other monopoly powers that would hike medicine prices.

The memo and chart reveal that the U.S. promotion of Hollywood and recording industry-inspired proposals that would greatly extend copyright durations, limit innovation and access to educational materials and force Internet providers to act as “copyright police” also remains widely opposed.

Financial services issues raised in TPP talks are “paralyzed,” according to the memo. U.S. officials haven’t budged on what other partners consider outrageous demands – including requirements that TPP member nations agree to a ban on countries’ use of various common-sense, macro-prudential measures, including capital controls that the IMF now endorses to avoid floods of speculative capital that cause financial crises.

The leak reveals that lead TPP negotiators meeting in Salt Lake City just before Thanksgiving missed a key milestone in market access negotiations. Japan continued to insist that certain agricultural commodities be excluded from TPP’s rules zeroing out tariffs. U.S. refusal to make offers on sensitive market access issues also raised ire from other countries, according to the memo.

Japan recently reiterated its position when U.S. Vice President Joe Biden visited Tokyo last week: [“The minister in charge of the Trans-Pacific Partnership free trade negotiations said Sunday that Tokyo can make no more concessions to Washington on sensitive issues after a Japan-U.S. meeting ended without progress.”](#) Japan’s parliament has listed five “sacred” commodities it says must be excluded from TTP rules zeroing out tariffs: rice, beef and pork, wheat and barley, sugar and dairy.

The United States and Japan were isolated, according to the leaked memo, in pushing to extend the controversial investor-state dispute settlement system, which empowers private firms to skirt member nations’ laws and courts and instead present grievances in a private tribunal, demanding compensation from governments for policies they claim undermine investor rights.

Both the environmental chapter and a text on state-owned enterprises (SOEs) appeared to be in shambles at the Singapore talks began. The Obama administration faces considerable political

peril on these issues. Democrats and Republicans alike have insisted that TPP include enforceable rules ensuring state owned firms competing in the private sector do not obtain any support from governments.

With respect to environmental standards, Congress forced Obama's Republican predecessor, President George W. Bush, to insert labor and environmental standards into his Free Trade Agreements -- standards enforceable through the same trade sanctions as the pacts' commercial provisions. If the Obama administration rolls back those policies, it will lose almost all Democratic congressional support for TPP. It is unclear if U.S. officials have even raised the currency discipline provisions that 60 Senators and 230 House members have demanded.

In another chapter relating to medicine pricing, the United States has reintroduced an Annex that it drafted in 2011 that all other TPP countries had rejected. Cynically dubbed the "Annex on Transparency and Procedural Fairness for Healthcare Technologies" it would allow drug firms to challenge TPP nations' medicine formulary reimbursement and pricing decisions. The target: the national health care systems of New Zealand, Australia and other TPP nations, which have used formulary lists to greatly reduce healthcare costs. Grassroots and legislator opposition to these terms in those nations is virulent, which may explain why U.S. reintroduction of the proposal has generated ire. U.S. state officials and Democratic congressional supporters of Obamacare also oppose those terms, which could undermine use of formularies to reduce U.S. healthcare costs.

Among the controversies revealed by the memo, which was written after the November 16-24 Salt Lake City round of TPP talks:

**Medicine Patents:** "As a general consideration, the meeting served to confirm the large differences that continue in most areas of the chapter, which introduces serious doubts as to what will happen in Singapore... Similar to what happened in SOEs, implicitly, it is admitted that it will not be possible to conclude this issue in Singapore... The Chair aims to reduce the number of the 119 outstanding issues."

**Financial Services:** "Inadequate progress. The positions are still paralysed. United States shows zero flexibility..."

**Environment:** "Meeting was interrupted because we could not get past the second issue [on] the definition of environmental law...."

**State-Owned Enterprises (SOEs):** "...the CNs [chief negotiators] recognised that the Ministers will not be in a position to agree to the text entirely in Singapore, so we decided that the Group make a list of questions (no more than four) that in a binary way, pose decisions arising around the central issues of the text: sub-national level, disciplines on subsidies or competitive advantages; treatment of exceptions or restricting the scope of application. The idea is that Ministers answer these questions and on that basis the Group works - in Singapore - to reflect those answers in the text. ... this is a huge task, considering the level of immaturity of the negotiations of the text...The common factor in other conversations (MX, SG, PE) is the shared

idea that this is very far from closed, and there is little room to make progress on a possible meeting in Singapore...”

**Investor State Dispute Settlement (ISDS):** “...The most important issue for the majority of members... is the proposal by the U.S. to apply ISDS to Investment Agreements and Investment Authorisations. The United States, as in previous rounds, has shown no flexibility on its proposal, being one of the most significant barriers to closing the chapter, since under the concept of Investment Agreement nearly all significant contracts that that can be made between a State and a foreign investor are included. ...It covers important concessions including mining, administrative or special operating contracts for hydrocarbon exploration, public works concessions (roads, highways, bridges, infrastructure, etc.) and it would override the choice of forum provisions in these contracts... .Only the U.S. and Japan support the proposal. ...Another of the most contested topics was the scope of the application of Investor- State dispute settlement (ISDS). This issue is far from being agreed, given that there are fundamental differences among the members...”

**“Transparency” Annex on Medicines:** “...Some bad news was that the United States revived the Transparency Annex on Medicines... Some countries expressed annoyance for the way that they resubmitted a text that had been strongly rejected in the past.... The U.S. reiterated that it does not apply to all countries and was asked to put a footnote that says that. That’s where it was left...”

**Market Access in Goods:** “... The panorama with Japan in particular looks very difficult. There should be a high-level instruction to confirm the understanding of the – no exclusions –so that JP (and several other countries) will move... On tariff negotiation, Milestone 4 is not fulfilled, because the U.S. prefers to leave it for Singapore where it can know what is the overall package that it would be closing. NZ, CA, CL, AU and PE indicated frustration with the aforementioned and with the continued lack of transparency... CL said it is necessary to have more transparency before Singapore, it is not adequate to learn of the status of offers in Singapore. United States outlined that the use of quotas would be the way to address certain sensitivities of some countries. That would be the way to grant access to Australia in sugar. The CNs gave instructions to intensify bilateral meetings and in those meetings countries to provide more information on the process of their offers. However, there is not much expectation that the situation on this point will improve.....As for the text, while some provisions were closed, issues on agriculture which the U.S. rejects remain pending”

**Rules of Origin:** “Very little progress in Sections A and B. Vietnam and Mexico with very little movement in areas of concern to them....” **Specific Rules of Origin:** “...Much work remains and it is unclear whether we will be able to finish within the set timeframe, especially when you consider that what is left is the most sensitive...”

**Textiles:** “...There was a major crisis after Mexico reported that it was leaving the Short Supply List because their interests have not been addressed by other countries, particularly Vietnam. This implies that Mexico applies the strictest general rule (Yarn Forward) and does not accept cumulation for the 187 products included in the list. Peru reacted strongly because it causes

problems in their private sector. ...There was an impression that this from Mexico was "cooked up" by the U.S. previously. This crisis is evolving..."

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