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For Immediate Release:  
Dec. 7, 2013

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### *Reporters Memo from Public Citizen*

## **Measuring the Outcomes of the TPP “End Game” Ministerial in Singapore**

The Obama administration has invested significant time, effort, and political capital trying to meet the do-or-die 2013 deadline it set for the Trans-Pacific Partnership (TPP) -- the economic arm of the administration’s “pivot” to Asia. As a result, the Singapore TPP Ministerial meeting is critical: it’s their last chance to complete the deal before time runs out.

Nearly all of the politically sensitive issues that have arisen in the secretive, closed-door TPP talks are still unresolved. So, the Obama administration has resorted to extreme tactics at Singapore to try to wring out a deal, including setting up invitation-only “Green Room” meetings where decisions on difficult issues can be “worked out” with some countries excluded.

But to what end? After nearly four years of TPP negotiations, President Obama still hasn’t convinced Congress to give him Fast Track Trade Promotion Authority for the deal. And, congressional opposition to TPP itself is building because lawmakers’ core demands – including sanctions-enforceable labor and environmental standards as well as binding disciplines on currency manipulation and subsidies for state owned enterprises – still haven’t been achieved. As well, many lawmakers oppose the drug patents terms and copyright protections being demanded by U.S. negotiators as well as the ban on the use of capital controls. Blocs of lawmakers also oppose various market access offers U.S. officials may be poised to make.

Missing yet another deadline to complete the TPP would call into question the viability of the process. The Obama administration seeks to lock in policies favorable to American business interests throughout the Pacific Rim. But in many nations, U.S. demands that governments alter their domestic policies on medicine prices, Internet freedom, “buy local” procurement preferences, financial regulations and a host of other sensitive, non-trade issues is spurring growing opposition. And, the extreme secrecy surrounding TPP negotiations has generated outrage: last week, the Australian Senate [passed legislation](#) ordering disclosure of the TPP text.

***Thus, many observers expect the administration to once again declare a deal has been reached -- regardless of the Ministerial meeting's actual outcomes.*** (They deployed the [tactic](#) after the TPP missed a previous 2011 deadline.) By withholding any actual agreement text from the public and press, the White House can announce a “final” deal, spurring wide press coverage and creating a false perception of inevitability while negotiations continue. ***[This memo ends with a checklist that includes the issues that would have to be resolved for an actual TPP deal to be completed at the Singapore Ministerial.]***

**Congress Warns Obama Not to Rush into Deal at Singapore:** Four days ago, Rep. Steve Israel (D. N.Y.), chair of the Democrat's Congressional Campaign Committee, declared he's “very concerned” about the TPP, chiefly because leaked documents show the pact doesn't include the “checks and balances” necessary to ensure congressional approval. Israel warned that the Obama administration shouldn't rush to finalize a deal during the Singapore Ministerial. He also reiterated the broad congressional opposition to using the Nixon-era Fast Track authority for the deal: “Twentieth Century ‘fast-track’ just does not work for a 21st Century agreement.”

**Obama Unable to Secure Fast Track Authority:** With just four days remaining before the end of this session of Congress, lawmakers haven't even introduced legislation to grant TPP Fast Track authority. This is not altogether surprising – congressional opposition to the controversial procedure, which forbids all congressional amendments to signed trade deals, is widespread and growing.

This represents in part deep divides among lawmakers, who don't want to cede their authority to amend any deal that undermines their views on sensitive issues, such as intellectual property. For instance, Sen. Orrin Hatch of Utah, the senior Republican on the Senate trade committee, has declared that countries unwilling to meet U.S. demands for patent extensions and other expansive intellectual property protections should be [thrown out](#) of the negotiations. But a large bloc of House and Senate members vowed to block TPP if it includes [patent terms](#) that could raise prices for medicine or insert [copyright terms similar to those in the Stop Online Piracy Act \(SOPA\)](#), which Congress – and the public - rejected last year.

Two weeks ago [151](#) Democratic and [30](#) Republican members of the U.S. House of Representatives sent [letters](#) to the president declaring their opposition to Fast Track.

“In light of the broad scope of today's trade agreements, it is even more vital that Congress have a fulsome role in shaping these pacts' terms,” according to the letter sent by Democrats. “Given our concerns, we will oppose ‘Fast Track’ Trade Promotion Authority, or any other mechanism delegating Congress' constitutional authority over trade policy, that continues to exclude us from having a meaningful role in the formative stages of trade agreements and throughout negotiating and approval processes.”

Even if legislation to establish Fast Track were introduced today, it would require the better part of 2014 for it to be passed by both houses of Congress. Recently Washington observers are suggesting that it may not be possible for Fast Track to obtain majority support in the House of Representatives at all. All Representatives face election in November 2011. Already 85 percent of those needed to stop Fast Track from being applied to TPP have stated their opposition.

## **Real Deal Check List: Were These Issues Resolved at the Singapore TPP Ministerial?**

As Trade Ministers arrived in Singapore, nearly all of the TPP's 29 chapters include a set of sensitive issues that haven't been resolved.

### **Sensitive Market Access issues**

- Japan's parliament has listed five "sacred" commodities it says must be excluded from TPP rules zeroing out tariffs: rice, beef and pork, wheat and barley, sugar and dairy. This red-line issue was reiterated 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."](#) (Kyodo Newswire)
- The U.S. Congress insists that Japan be subject to a [special bilateral agreement](#) providing certain additional concessions relating to auto trade, insurance and access for U.S. beef. While the Abe administration agreed to this demand, the bilateral pact - a U.S. condition for Japan being included in a final TPP deal - has not been finalized, with negotiations on auto trade issues especially mired.
- Government Procurement: The United States wants national government contracts above a set threshold be made available to firms from all TPP countries on equal terms. But many congressional Democrats and Republicans oppose any waiver of Buy American preferences, which would be required to implement this rule. The U.S. demand has also raised broad opposition in Malaysia, where its "**bumiputera** policy" -- which guarantees a portion of government procurement contracts go to ethnic Malays -- is key to preventing recurrences of violent attacks against the country's ethnic Chinese population, which dominates its business sector. Other TPP nations want the United States to guarantee their firms will get the same access to the 50 U.S. states' procurement activities as is provided for U.S. firms, which U.S. negotiators have refused.
- Apparel and shoes: Vietnam has insisted on duty-free access for its clothing made with inputs from China and other non-TPP nations, and elimination of U.S. tariffs on footwear. If American officials agree, it increases the uncertainty that Congress would approve the TPP.
- Sugar: Australia wants U.S. access for its sugar exports, a demand that the United States rejected in its bilateral free trade agreement (FTA) with Australia. The United States declared it will not negotiate new market access with countries with which it already has FTAs -- in no small part to avoid the wrath of the politically powerful sugar industry, which has strong support among Democrats and Republicans in Congress.
- Dairy: New Zealand's main TPP demand: increased access to American markets for its massive dairy export industry. But with dairy farmers in almost every U.S. congressional district, a large bloc of Democrats and Republicans strongly oppose this demand. Yet despite its refusal to negotiate market access with its current FTA partners, the United States has demanded access for dairy products in Canadian markets -- a condition it couldn't secure in the 1993 North American Free Trade Agreement (NAFTA).

*An over-arching question is: if the U.S. provides new market access on dairy and sugar, will it be commercially significant or only small tariff-rate quotas designed to be used by demandeur countries as political optics to “show” gains?*

### **Disciplines Against Currency Manipulation**

- An overwhelming majority of American lawmakers has said TPP must include binding disciplines against currency manipulation. Although 230 Representatives and 60 Senators wrote to President Obama with the demand, U.S. negotiators so far haven't initiated negotiations on the issue, much less secured terms. Last month, Sen. Lindsey Graham of South Carolina, a prominent Republican supporter of past U.S. trade agreements, announced he would oppose TPP if it didn't include enforceable currency disciplines.

### **Enforceable Labor and Environmental Standards**

- The Obama administration faces considerable political peril on this issue: Congress forced Obama's Republican predecessor, President George W. Bush, to insert labor and environmental standards into his FTAs -- 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. However, most other TPP nations oppose this demand. Even those countries that haven't rejected the notion of enforceable standards oppose the use of sanctions, instead insisting violations only be punishable by fines – a system used in NAFTA which faces stiff congressional opposition.
- The TPP's Environmental Chapter has proved to be very difficult. Congress demands that it include obligations that, if nations fail to enforce the multilateral environmental agreements (MEAs) that they have signed, they'll face TPP enforcement and trade sanctions. Other bottom lines lawmakers have for this chapter include a ban on trade in illegally harvested timber and endangered species, with violations subject to trade sanctions, and enforceable disciplines on fisheries subsidies. Some TPP countries oppose enforceable environmental standards altogether, and many are strongly oppose to U.S. demands relating to MEAs. And, among the countries involved in TPP are those that have led unwavering opposition to disciplines on fishery subsidies, including in the context of the World Trade Organizations.

### **State Owned Enterprises**

- After years of deadlock, there still was no agreed text for this chapter at the end of the special “end-game” Salt Lake City round of TPP negotiations last month. While other chapter have significant amounts of agreed text, but some contested issues for SOEs there is deep disagreement on the overall approach to the issue and even on the definition of ‘state owned enterprise’. A number of Republicans and Democrats on Capitol Hill have indicated they will vote no on TPP unless it includes the U.S. version of rules ensuring state owned firms competing in the private sector do not obtain any support from governments. However, many TPP countries have numerous SOEs.

### **IP Chapter Patent Rules and “Transparency” Text on Medicine Pricing Rules**

- Most other TPP countries have repeatedly opposed U.S. proposals that would deliver on Big Pharma's demands for extended patents, data exclusivity and other monopoly powers that

raise medicine prices. The powerful American pharmaceutical industry has been clear: it will fight against TPP if the pact reverses extreme provisions in past U.S. FTAs. A sizeable bloc in Congress has stated that it will oppose the TPP if such terms are included.

- In another chapter, an Annex the United States wants -- cynically dubbed the “Annex on Transparency and Procedural Fairness for Healthcare Technologies” -- 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 employed formulary lists to greatly reduce healthcare costs. Grassroots and legislator opposition to these terms in those nations is virulent; as a result, caving in to that demand is politically perilous. At the same time, an increasing number of U.S. state officials and Democratic congressional supporters of Obamacare also oppose those terms, which could undermine enhanced use of formularies to reduce U.S. healthcare costs.

### **Copyright Rules**

- 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” have triggered public outrage in numerous TPP countries. Yet the United States has demanded them, a move which would implement policies similar to SOPA, a wildly unpopular bill Congress rejected in 2012. Deep disagreement remains on many aspects of this TPP text.

### **Financial Regulation and Stability**

- With the IMF now endorsing the use of capital controls to avoid floods of speculative capital that cause financial crises, it’s no surprise that there is united opposition to the U.S. demand that the TPP include a ban on countries’ use of various common-sense, macro-prudential measures including capital control and financial transaction taxes. The United States has objected to a proposal for an exception allowing certain uses of such measures.

### **Investor-State Dispute Resolution (ISDR)**

- Japanese Prime Minister Abe’s Liberal Democratic Party parliamentary majority has set as a condition for Japan’s TPP participation: the deal can’t include investor-state enforcement. Australia has maintained an exception to being submitted to ISDR, which elevates individual corporations to equal status with sovereign nations and allows them to enforce a public treaty by “suing” nations for compensation before international tribunals comprised of private-sector attorneys over claims that governments’ actions undermine their expected future profits. The U.S. Conference of State Legislatures, the body representing the 50 U.S. state legislative bodies has adopted a policy of opposing any trade agreement with investor-state enforcement. The United States is demanding all countries submit to this system.
- Even those TPP nations that have agreed to investor-state enforcement 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.

- The United States has consistently opposed an exception supported by most other TPP nations which would safeguard domestic environmental, health and other policies from the TPP tribunals.

### **Cross-Cutting Legal Issues**

- Agreement on the legal mechanisms required for implementing the TPP has proven extremely contentious. A standard provision in the implementing legislation of past U.S. trade agreements requires that, after the U.S. Congress ratifies the pact, the president must withhold formal written notification of that approval from partner countries until the President certifies that the partner countries have altered their own laws and policies to comply with the trade deal. That is to say, even after both the United States and its trade partners have ratified an agreement, it takes effect only after the United States unilaterally certifies that its partners have done what it has demanded. TPP nations argue the certification process gives the US government and American corporations enormous leverage over their trade partners, forcing them to conform to American interpretation of laws and policies – some of which are often deliberately vague, opaque and contentious. This process also often delays implementation of agreements.
- Congressional demands specific to Vietnam include a mechanism to ensure that country is in compliance with TPP labor rights requirements before the TPP would take effect with respect to the United States. Vietnam opposes such terms.