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Public Citizen's Global Trade Watch  
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Contact: Lori Wallach, [llwallach@citizen.org](mailto:llwallach@citizen.org)  
Ira Arlook (202) 258 5437 [ira@fenton.com](mailto:ira@fenton.com)

## *Memo to Reporters Covering Obama Asia Trip*

### **Administration Desperate to Announce Breakthrough on Trans-Pacific Partnership in Japan, But Congress not Buying Economic or Foreign Policy Sales Pitch and Won't Give Obama Trade Authority for TPP**

#### ***Public Citizen Publishes Updated List of TPP Issues That Require Resolution for a Deal to Be Made; List Largely Unchanged Since 2/14 Singapore TPP Ministerial***

WASHINGTON, D.C. – A major goal of President Barack Obama's Asia trip is to revive the Trans-Pacific Partnership (TPP) after four years of negotiations have resulted in talks deadlocked over scores of issues and growing U.S. congressional and public opposition.

Whether or not any real deal is made, a "breakthrough" almost certainly will be announced because the U.S.-Japan summit is viewed as a do-or-die moment to inject momentum into the TPP process. Familiarity with kabuki theatre may be useful in interpreting the summit outcomes on TPP.

Obama arrives in Asia without trade authority and with TPP partners Japan and Malaysia aware that the U.S. Congress, which has exclusive constitutional authority over trade policy, is [increasingly skeptical](#) about the TPP. January 2014 legislation to enact Fast Track authority was dead on arrival in the U.S. House of Representatives. Already in late 2013, [180](#) House [members](#) had announced they would never authorize the Fast Track process again; more announced opposition when the bill was submitted.

The prospect that Obama cannot deliver on whatever "compromises" he may make was heightened by a congressional sign-on letter circulating last week calling for Japan to be thrown out of TPP negotiations unless it agreed to *eliminate* its agricultural tariffs and major U.S. agribusiness interests calling for the same.

But at the same time, there is enormous pressure for Obama and Prime Minister Shinzo Abe to announce a breakthrough. Months of non-stop U.S.-Japan bilateral TPP negotiations and ministerial-level meetings have failed to overcome sensitive agricultural and auto market access issues. Without knowing what market access gains they may achieve in return, other TPP nations have been loath to consider high-stakes tradeoffs relating to U.S. demands in TPP to extend medicine patents, limit financial regulations, discipline state-owned enterprises, enforce labor and environmental standards, limit financial regulation.

A checklist of these unresolved issues is included at the bottom of this memo. Despite the unprecedented secrecy surrounding the TPP negotiations, leaks of TPP documents are fueling

opposition in many TPP countries as the pact's prospective threats are revealed. As a result, the other TPP nation governments face considerable domestic political liability for acceding to various U.S. TPP demands.

Finally, as the economic sales pitch for the TPP has faced increasing incredulity in Congress, TPP proponents have shifted to the foreign policy arguments-of-last-report used to sell flagging trade deals. The president's Asia trip is the best possible platform to make arguments that distract from the TPP's merits and shift the focus to broad brush narratives that connect to congressional and public anxieties about a rising China.

A [report](#) released last week by Public Citizen reveals that nearly identical foreign policy arguments have consistently proven baseless when used to sell trade deals over the past two decades. The report reviews foreign policy claims made to promote the TPP, ranging from the absurd to the counterfactual, to those that repeatedly have been disproved by the actual outcomes of similar claims made for past pacts. Repeatedly, Congress has approved trade deals based on dire predictions that failure to do so would mean diminished U.S. power, the takeover of important markets by competitors or foreign instability, only to find that many of those predictions came true in spite of, and sometimes even because of, pacts' enactment.

Among the report's findings, echoed last week in a [call](#) with members of Congress and Asia policy expert Clyde Prestowitz:

- Past free trade agreements (FTAs) failed to counter the rising economic influence of China (or Japan): From 2000 to 2011, U.S. FTAs with eight Latin American countries were sold as bulwarks against foreign economic influence in the hemisphere. The U.S. pacts were implemented *and* China's exports to Latin America soared more than 1,280 percent, from \$10.5 billion to more than \$145 billion, while the U.S. saw only modest export growth. The U.S.-produced share of Latin America's imported goods fell 36 percent, while China's share increased 575 percent. Similarly, under the North American Free Trade Agreement's (NAFTA) first 20 years, the U.S.-produced share of Mexico's imported goods dropped from almost 70 percent to less than 50 percent, while China's share rose more than 2,600 percent. Similarly, after hysterical claims that Japan would seize U.S. market share in Latin America by signing its own free trade agreements *unless* the United States approved NAFTA and other FTAs, such Japanese FTAs were signed anyway.
- The TPP will not "contain" or isolate China: U.S. officials have repeatedly welcomed China as a prospective TPP member. How can the TPP isolate China if China can become a member? Administration officials note that China could join only if it agreed to the TPP's rules, but those rules would give Chinese products duty-free access to the U.S. market and new foreign investor rights and privileges that would enhance China's relative economic might within the United States. This may explain China's statements of increased interest in joining the TPP. The TPP will not empower Pacific allies to act as a bulwark against Chinese influence, given that many of those nations see China as a partner. The report cites officials from TPP countries stating that if the TPP were to become a China-containment tool, they would no longer participate in TPP negotiations.
- The TPP is not a vehicle to impose "our" rules vs. China imposing "theirs": The TPP's actual terms undercut the false, but conveniently scary, dichotomy posed as a choice between using TPP to impose "our" rules internationally or living with rules set by China. This argument presumes the TPP to represent "our" rules, but in fact many of the TPP's terms reflect the narrow special interests of the 600 official U.S. corporate trade advisors that have shaped them. TPP investment rules would promote more U.S. job offshoring and further gut the U.S. manufacturing base that is essential for our national security and domestic infrastructure. TPP procurement rules would ban Buy American policies that reinvest our tax dollars to create economic growth and jobs at home.

TPP service sector rules would raise our energy prices and undermine our energy independence and financial stability. TPP drug and copyright terms would raise health care costs and thwart innovation. The study summarizes a recent U.S. Department of Defense report that concludes that U.S. deindustrialization poses a threat to national security and our nation's economic wellbeing.

***TPP deal vs. kabuki checklist - to actually have a TPP deal, these issues must be resolved:***

**Disciplines Against Currency Manipulation**

A TPP without binding currency provisions could be dead on arrival in Congress. The other TPP nations know this but still oppose such terms. While 230 members of the U.S. House of Representatives and 60 U.S. senators have written to Obama demanding currency manipulation disciplines in the TPP, U.S. negotiators haven't initiated negotiations on this, much less secured terms. Among others, U.S. Sen. Lindsey Graham (R-S.C.), a prominent supporter of past pacts, announced he would oppose the TPP if it does not include enforceable currency disciplines.

**Enforceable Labor and Environmental Standards**

As a January 2014 text leak revealed, all other TPP nations oppose many TPP Environment Chapter terms that the United States demands. This includes obligations that, if nations fail to enforce certain environmental agreements that they have signed, they will face TPP enforcement and trade sanctions. Other U.S. bottom lines that face unified opposition are a ban on trade in illegally harvested timber and endangered species, with violations subject to trade sanctions, and enforceable disciplines on fisheries subsidies. Among the TPP countries are those, including Japan, that have led unwavering opposition to disciplines on fishery subsidies, including in the context of the World Trade Organization. More broadly, the other countries have to date rejected the U.S. demand that both the environment and labor chapters be enforceable and subject to the same dispute resolution system as other TPP chapters. These are terms that Congress forced President George W. Bush to include in his pacts. If the Obama administration rolls back the labor and environmental terms included in Bush-signed agreements, it will lose almost all Democratic congressional support for the TPP. In addition, if the labor standards were enforceable, it remains unresolved how the TPP could include Vietnam, one of four countries cited by the Department of Labor for using both child and forced labor in apparel production.

**State-Owned Enterprises**

After years of deadlock during which countries could not even agree on a text from which to negotiate, substantive talks are now under way but there is still no agreed text for this chapter from which to narrow down differences. To complete a deal, either the United States will have to roll back its demands, which would be extremely unpopular in Congress, or a bloc of TPP countries with numerous state-owned enterprises could have to make major concessions.

**Intellectual Property Chapter Patent and "Transparency" Text on Medicine Pricing Rules**

Most other TPP countries continue to oppose U.S. proposals to expand the scope of patentability, including terms such as new monopoly patents for new uses of already-patented drugs that would promote patent evergreening as well as terms to subject surgical procedures to monopoly patents and extend data exclusivity terms that would deliver on Big Pharma's demands for monopoly powers that raise medicine prices. The powerful American pharmaceutical industry has declared that it will oppose the TPP if the pact reverses extreme provisions in past U.S. Free Trade Agreements (FTAs). A sizeable bloc in Congress has stated that it will oppose the TPP if such terms are included. Another contested issue is the U.S. proposal for a cynically dubbed "Annex on Transparency and Procedural Fairness for Healthcare Technologies" that would allow drug firms to challenge medicine formulary reimbursement and pricing decisions. The target ostensibly was the national health care systems in New Zealand, Australia and other TPP nations that use formulary lists to reduce health care costs. Grassroots and legislator opposition to the U.S. proposal is virulent, making concessions politically perilous. Big

Pharma insists that these terms must extend beyond those contained in the U.S.-Australia FTA. Meanwhile, an increasing number of U.S. state officials and Democratic congressional supporters of the Affordable Care Act also oppose those terms, which could undermine enhanced use of formularies to reduce U.S. health care costs.

#### **Copyright Extensions**

Hollywood- and recording industry-inspired proposals that would greatly extend copyright durations, limit innovation, restrict access to educational materials and force Internet providers to act as “copyright police” by cutting off people’s Internet access (think of the SOPA/PIPA debacle) have triggered public outrage in numerous TPP countries, leading to a negotiation stalemate. The United States has continued to demand that the TPP be used to require countries to adopt domestic copyright terms beyond international norms and aggressive copyright and enforcement provisions that would limit the public domain and Internet freedoms. A bloc of countries remains solidly opposed to various elements of these demands. There also is entrenched disagreement about whether copyright should be able to keep works of art and literature out of the public domain for 70 years after death of the author.

#### **Financial Regulation and Capital Controls**

With the International Monetary Fund 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 among other TPP countries to a U.S. demand that the TPP include a ban on the use of various commonsense, macro-prudential measures, including capital controls and financial transactions taxes. While the United States has objected to an exception allowing the use of such measures, other TPP nations – including Malaysia, have stated they will not agree to a TPP that prohibits the use of such measures.

#### **Investor-State Dispute Settlement (ISDS)**

Australia is demanding a broad exception to ISDS, which elevates individual corporations to equal status with sovereign nations and allows them to enforce a public treaty by “suing” national governments for compensation before international tribunals comprised of private-sector attorneys over claims that government actions undermine their expected future profits. The National 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 concessions, private-public-partnership utility management contracts and procurement contracts be subject to such extra-judicial processes. The other countries also oppose a U.S. demand that the investor-state terms apply “pre-establishment” – creating a right to investment, including acquisition of land. The United States has consistently opposed an exception supported by most other TPP nations that would safeguard domestic environmental, health and other policies from the TPP tribunals.

#### **Mechanism for the TPP to Go into Effect**

Agreement on the legal mechanisms required for implementing the TPP has proven extremely elusive. 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 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 changed domestic laws according to U.S. demands. TPP nations argue the certification process gives the U.S. government and corporations enormous leverage to force them to conform to American interpretation of trade agreement terms – some of which are often deliberately vague, opaque and contentious. This process also often delays implementation of agreements.

## □ Sensitive Market Access Issues

- **Agriculture:** Japan’s parliament has listed five “sacred” commodities that must be excluded from TPP tariff-zeroing: rice, beef/pork, wheat, sugar and dairy. The United States reportedly had backed down on its demand, also pushed by New Zealand and other TPP nations, that Japan agree to zero tariffs for all of the hundreds of product lines under those categories. A deal that falls short of tariff zeroing but allows more U.S. rice imports is rumored. But on pork and beef, U.S. negotiators are under enormous pressure from Congress and agribusiness interests not to relent – and a standoff has ensued for months. Meanwhile, Australia wants U.S. access for its sugar exports, a demand that the United States rejected in its bilateral FTA with Australia. The United States has 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 U.S. sugar industry, which has strong support among Democrats and Republicans in Congress. New Zealand’s main TPP demand is increased access to American and Canadian markets for its massive dairy export industry. But with dairy farmers in many U.S. congressional districts, 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 NAFTA and that Canada has also rejected for the TPP.
- **Autos:** 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. Japan has rejected a U.S. demand that tariffs be phased out over 30 years.
- **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 Democratic and GOP members of Congress 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 a recurrence of violent attacks against the country’s ethnic Chinese population, which dominates its business sector. Other TPP nations want the United States to guarantee that their firms will get the same access to the 50 U.S. states’ procurement activities as they would provide to 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 the elimination of U.S. tariffs on footwear. The “rule of origin” Vietnam requests would reverse a long-standing “yarn forward” rule included in past U.S. pacts to support U.S. jobs. If honored, Vietnam’s demand would increase the uncertainty that Congress would approve the TPP.

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