

Foreign Policy Experts Issue Prebuttal of Expected Obama SOTU Sales Pitch About TPP as a Means to Counter China's Growing Influence

Experts Outline How Foreign Policy Arguments for the TPP Both Distort Political Reality and Distract From Negative Economic Effects of the Pact

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Speakers:

U.S. Rep. Brad Sherman (D-Calif.), House Foreign Affairs Committee, Subcommittee on Asia and the Pacific ranking member

Clyde V. Prestowitz, president, Economic Strategy Institute, and author most recently of "Japan Restored"

Michael Wessel, former general counsel to the House Democratic Leader and a congressionally appointed commissioner on the U.S.-China Economic and Security Review Commission

Moderator: Lori Wallach, Public Citizen's Global Trade Watch

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I want to thank the speakers and the reporters who have joined us today. Our call has foreign policy experts who will speak about President Obama's expected State of the Union sales pitch about TPP as a means to counter China. We have with us three well-known experts on China, foreign policy and trade: Congressman Brad Sherman, Clyde Prestowitz, and Mike Wessel. We are going to start with Representative Brad Sherman, the ranking member on the House Foreign Affairs Committee, Subcommittee on Asia and the Pacific, and a Democrat from California.

Rep. Brad Sherman (D - Calif.)

I spent almost 20 years on national security policy as the second-ranking Democrat on the Foreign Affairs Committee and first on the Asia Subcommittee. This thing is not only terrible economic policy, it is terrible national security policy. First, because it is bad economic policy. It will drive up our trade deficit. The Joint Chiefs of Staff testified that the number one threat to America's national security is the budget deficit, and the budget deficit and the international trade deficit go hand in hand. Driving up that budget deficit means a worse economy and higher U.S. deficits, more sequesters, more loss of military fighting power.

We're told that we should embrace this agreement because it confines China and demonstrates that we write the rules. Well, if the deal only contained the Wall Street written rules, then you could say it's an American agreement. Of course, those Wall Street rules have decimated the American middle class. But in fact China, without showing up to the negotiations, has written the two rules that are most important to China.

First, this agreement enshrines the idea that currency manipulation is just nifty, and that you can have all the benefits of a free trade agreement and total access to the U.S. market and manipulate your currency, and nobody can do anything about it.

Second, rules of origin. China is a tremendous beneficiary because goods that are only 45 percent made in Vietnam get free access to the United States. So China gets a fast track to get their majority-Chinese-made goods into the United States without even showing up to the negotiations, let alone making a single concession. But that 45 percent could be even less. I'm an old CPA, and there are so many ways to manipulate that, especially if you have two related corporations – so you have a Chinese manufacturing corporation with a Vietnamese subsidiary. Just give my old CPA firm a little time and we'll turn 20 percent into 45 percent Vietnamese content. I have been involved in Section 482 audits. There are so many ways for inter-company transactions to misstate, or manipulate, or just give the benefit of the doubt to what percentage of a product is manufactured in a particular country.

Next, going beyond our Asia policy and our China containment policy, this is terrible policy with regard to sanctions. Now we just had a huge fight in this country. Obama said our sanctions were so good on Iran, they brought us a great deal. Netanyahu said those sanctions are so good, we need more of them to get a better deal. You'd think they were disagreeing, but the one thing they agreed on: sanctions on Iran were critically important, and frankly without sanctions, Iran would have a bomb by the end of this administration. So what does this TPP agreement do to sanctions? It weakens the Essential Security Exception and says that if we want to impose, say, sanctions on a Japanese company because they are doing business with the Iran Revolutionary Guard Corps – and by the way we'll be considering that in Foreign Affairs, imposing those very sanctions, that is a terrorist organization, it kills Americans - the Japanese company should not be doing business with it.

In our prior agreements, we had a provision that said once America says we need to do this for our national security, that was dispositive. Now, instead, you're going to have business lawyers who don't know a damn thing about our efforts to deal with international terrorism, deciding that this or that sanction is not really important for America's national security, and that America must pay a huge price to the company that has chosen to do business with the murderers in the Iran Revolutionary Guard Corps.

Second, we have the CFIUS process, by which we apply national security analysis to those who want to buy key infrastructure here in the United States. Other countries took exceptions in TPP, they have safeguards for their domestic national security review process. The United States did not take that exception to the TPP rules that grant foreign investors new rights to acquire land, companies and natural resources concessions. And I'll say this: there are companies, perhaps based in Dubai, that should not be running American ports. And to say that we give up the control of our infrastructure, and we pay a huge penalty if we conclude that nixing an infrastructure sale agreement for national security reasons, that is just another huge problem for this deal.

So it's bad for our economy, it's bad for our middle class, it's bad for our trade deficit, it enshrines the idea that currency manipulation is the way to do international business, it provides China with a fast track for goods that are majority made in China, and again the percentage of value is in the eye of the manufacturer's accountants – so maybe it's really 80 or 90 percent. And that assumes there's any enforcement at all, and there basically isn't. We expose ourselves to liability if we sanction international terrorists and state-sponsors of terrorism when those

sanctions would fall on companies based in TPP countries, and we lose the CFIUS process, or at least when I say we lose it, we either lose it or we pay a huge penalty if we choose to exercise it, which as a practical matter means we lose it.

This deal's economics are so bad for the middle class the president is going to sell it as a necessary sacrifice of jobs for America's national security, call upon our patriotism to approve it. The fact is this is a bigger disaster from a national security perspective than it is from an economic perspective.

Wallach

Thank you very much Congressman Sherman. All the speakers will be available for questions after their opening statements. Our next speaker is Michael Wessel. He is the former General Counsel to House Democratic Leader Gephardt, and a congressionally-appointed Commissioner on the U.S.-China economic and security review commission for many years. Michael.

Michael Wessel

Thank you and thank you Congressman Sherman as well. I've been involved to one degree or another in the debates about every FTA – Free Trade Agreement – since the first agreement was signed in 1985, the U.S.-Israel Free Trade Agreement. Over the years, there's been a pretty regular script used by administrations, both Democratic and Republican, to promote the agreements. First, in the initial days, they talk about economics. But those arguments often fall pretty much by the wayside as it becomes clear that the agreements really don't add up for domestic production and jobs. The TPP is no different. In fact, arguments about the economic importance of the agreement and the shift to it being about foreign policy actually started far earlier for the TPP than for past FTAs. And you can easily track the rhetoric of administration officials on this matter.

I could spend a significant amount of time on the economics of the TPP, which Congressman Sherman referred to, and how as one analysis published the day after the deal was done showed our nation's goods deficit would increase by tens of billions of dollars. Proponents have said that TPP is about writing the rules so that China doesn't get to. Well, China doesn't need to write the rules – we actually did it for them, with inadequate rules on State-Owned Enterprises, rules of origin and currency manipulation, as the Congressman stated.

But today we're focusing on why the foreign policy arguments about the importance of the TPP don't stand up. I've been a commissioner on the U.S.-China Economic and Security Review Commission since it was created by Congress in 2000, and the normal disclaimer, of course, in Washington is I'm speaking for myself and not for the Commission. This summer I traveled to China, Vietnam and Hong Kong and discussed many of the current issues in the state of play regarding U.S. economic foreign policy, and security issues in the region. TPP is not a substitute for a clear, consistent and comprehensive China policy. That's what's really needed and that's what's missing.

Countries in Southeast Asia are already concerned about China's actions and policies, and don't need the TPP to convince them that they should work more closely with the U.S. on a broad range of issues. TPP will do nothing to stop China's reclamation of rocks and reefs in the South China Sea that they believe will extend their territorial claims under the Law of the Sea. Just this week, China conducted a test flight at the air strip it built on Fiery Cross Reef in the Spratly Islands, drawing condemnation from Vietnam. TPP will do nothing to stop China's other actions in the East and South China Sea such as the creation of their Air Defense Identification Zone, known as the ADIZ, or their attempt to place a drilling rig in disputed waters off of Vietnam.

TPP will do nothing to stop China's military buildup, which includes fourth generation fighters, anti-ship ballistic missiles, increasing capabilities in space, blue water naval expansionism and other expanded power projection capabilities. TPP will do nothing to prevent China's military buildup from overwhelmingly tipping the cross-Strait military balance against Taiwan. TPP will do nothing to alter China's increasing efforts to crackdown on dissent, and disdain for human rights, labor rights and religious freedom.

Indeed, the TPP is rewarding some participating countries that continue to abuse human rights, like Malaysia's trial of a cartoonist for alleged sedition, and Vietnam's recent detention of dissidents, and Brunei's ban on public celebrations of Christmas. TPP will do nothing to address China's continuing cyber espionage, which threatens America's economic and national security. And TPP will do nothing to address China's creation of a new international architecture to confront the U.S. through the Asian Infrastructure Investment Bank or their "One Belt, One Road" strategy.

Countries in Asia don't need the TPP to reward them for recognizing that it's in their own deep self-interest to strengthen their ties with the U.S. because of the threats they currently face from China.

Wallach

Michael, thank you very much. Our final speaker is Clyde Prestowitz, who is one of our nation's best-known Asia experts. He's just written a new book on Japan, called *Japan Restored*, and is the President of the Economic Strategy Institute. I think I first met Clyde when he worked in the Reagan Administration, as a Commerce Department Trade Official.

Clyde V. Prestowitz, President, Economic Strategy Institute

Lori, thank you, please excuse my voice. Like Mike, I have been involved in all of these negotiations going back to the early 1980s. I was in the Reagan Administration as Counselor to the Secretary of Commerce. There are three things that President Obama has mentioned in the past for support during the TPP. One of them is the notion that the TPP will prevent China from writing the rules of trade of the future. This is complete nonsense. China is already writing the rules of trade.

All of the countries with whom we are negotiating in Asia for the TPP already have free trade agreements with China, and all of them are negotiating a regional comprehensive economic

program that China hopes to conclude within the next year or so. So in a sense, the Chinese are writing the rules that they want with our Asian allies, and nothing that we are putting in our rules impedes them from negotiating and doing deals with China.

The second point that the president has used is one that I've found very interesting. He made the point that we want American producers to be able to sell in foreign markets, as the foreign producers sell in the U.S. markets. And he used Japan as an example. And he said that with the TPP, American automakers would be able to see Fords and Chryslers and GM cars riding the roads of Japan, just as Toyotas, Nissans and Hondas ride in the U.S. Well, this is very disappointing to hear the President say that, because it revealed the complete, complete misunderstanding of how the trade actually works, and what the barriers really are. Particularly with regards to Japan.

Probably the most competitive automobile company in the world today is Hyundai, the Korean company Hyundai. It's gaining market share against the Japanese in every major market in the world, except Japan. In Japan, Hyundai has withdrawn from the market.

The point, the major point is that to get into a car market, you have to have dealers. In the United States and other countries, dealers are independent and are free to sell whatever cars they want. In Japan they're not. And so it doesn't matter what kind of a rule we have in the TPP, as long as there's not an antitrust rule in Japan that makes dealers independent, foreign cars are not going to ride the roads of Japan.

The last one I'd like to make is, just seconding what Mike Wessel said, the notion that the TPP is going to impede China from continuing to build bases in the South China Sea, from moving ahead with the "One Belt, One Road" project, from intimidating its neighbors in a variety of ways, is childish. That's not going to happen. We've already seen that that's not going to happen. And in a way, it seems to me that the Chinese are laughing all the way to the bank.

As Congressman Sherman said and as Mike said, because of the rules of origin contained in the TPP, China will be able, through other Asian producers, to increase the amount of the sales to the US. China will be able to sell more auto parts to Japan. Those will be considered as TPP origin cars, and they'll come to the U.S. So, there's no inhibition on China here in any particular way. And conversely, even the most optimistic of forecasters have forecast that the TPP over the next ten years will provide virtually zero growth to the US economy. So what's the point?

Wallach

Thank you to all of our speakers. We now will start with questions. As you queue up for questions, I want to call reporters attention to four documents that you will find helpful with more information relating to what our speakers have said. You can find them on TradeWatch.org.

First is a compilation of all of the quotes during the period of China's accession to the World Trade Organization where the argument was "China has to get into the WTO so the U.S. can write the rules of global trade." Now fifteen years later, of course, we have an enormously larger

trade deficit with China, and China is largely not following those WTO rules. What is kind of fun about this document is the quotes from 2000 that are almost word-for-word the same lines being used right now, only you change WTO for TPP. It's all cited, sourced and linked.

Second is a document on the Currency Declaration the administration announced the day they released the TPP text. It's not even a side agreement, it's just a glorified news release signed by the countries. On our website is a point-by-point bulletin takedown of what that requires and what it doesn't, a summary of which is it doesn't require anything new and it's not enforceable.

Number three document goes through the issues that Congressman Sherman raised on national security. It has the citations and the actual language with respect to the weakening of the Essential Security Exception in the TPP relative to what has been in every U.S. trade agreement for the last decade. The previous language would allow the U.S. without facing trade sanctions or other liability to be able to, for instance, use sanctions for national security purposes. That language is gone. Our decisions on what is our essential security interest is second-guessable.

And number four is a study, *The Rising Use of the Trade Pact Sales Pitch of Last Resort*, on 20 years of trade pact related foreign policy claims on China. It goes through all the data of past claims about how China would clean our clock if we didn't do NAFTA and a variety of other agreements in Latin America. It goes through trade data showing that we did those agreements and China is still cleaning our clock because the trade agreements actually don't make a difference vis-a-vie investment, trade flows, etc. in a third country. Which gets to the whole notion of somehow TPP ring-fencing China in Asia which, of course, is rather silly. So, with that, may we have the first question?

Jack Kapooro, *Inside US Trade*

I have a question for Mr. Wessel and Representative Sherman. It's about the timing of a potential TPP vote. Based on both of your experiences with Congress and trade votes in the past, do you think that there is any possibility that the ITC would be able to deliver its report on TPP ahead of time and, if not and the report is delivered as expected in May, is there any chance in your view that Congress could vote on TPP between mid-May and mid-July before the recess? Is that what the Administration is pushing for? Thanks.

Sherman: My guess is we don't vote on this until lame duck. The establishment in this country and perhaps a slight majority of my colleagues initially are favorable to this, but the country is overwhelmingly against it. The best time to ask members to fail to represent their constituents would be right after the election.

Wessel: If you look at the interest in next week's hearing, where the ITC has expanded the hearings to three days, because of the interest, it would concern me and many others if they short-circuited the process when not only is there so much interest in testifying but the breadth of this agreement is so deep that the analysis is going to require a significant amount of time.

Sherman: The politics of this are toxic. I think every presidential candidate that is in double-digits, in either party, in any state, has come out against this agreement.

Victoria Guida, *Politico*

This question is for Congressman Sherman. The CFIUS process is set up so that it can only consider national security concerns in deciding whether to reject an investment rather than economic or other concerns. It is my understanding that TPP is written to, sort of, reflect the CFIUS process and it's, sort of, a response to the fact that China in its national security law has tried to include economic provisions. My question is how is that not the U.S. writing its rules rather than what China would rather do?

Sherman: We get a worse deal than other countries who signed the TPP. That's because the other countries have taken an exception and will not be bound by the TPP rules that grant foreign investors new rights to acquire infrastructure and companies in the host country. If the host country were the United States, even if CFIUS opposed on national security grounds an acquisition by a TPP country, if that investment was stopped, the company that couldn't make the investment can haul us into this extra-judicial investor-state tribunal where people who have no training or background in protecting America's national security could find that the United States was liable. That will cause some fear in the CFIUS process. It would be embarrassing to Treasury and others having supported this deal to conclude that an investment, even if it was kind of bad for America's national security, if they know that an investor-state tribunal is going to be looking over their shoulders, that they face embarrassment and economic laws if they are overruled by this tribunal, I think you're going to see CFIUS turn from a guard dog to a lap dog.

Prestowitz: We tend to put a lot of emphasis on the rules, but I think we need to recognize that other countries don't put the same emphasis on the rules. Let's take for example Vietnam. This TPP deal has rules on labor unions. Do we really believe Vietnam is going to suddenly blossom with independent labor unions? And we tend to say, "Okay, if a country violates the rules we will sanction them." But if the purpose of the deal is to reassure our allies that we are going to somehow support them against China, are we really going to sanction Vietnam because they didn't have labor unions, when we need Vietnam's help to deal with China in the South China Sea? I think the focus on the rules is a little misplaced because our experiences, particularly with China, but in many other cases, is that other countries don't typically, necessarily follow the rules.

Sherman: Our subcommittee and full committee are doing countless hearings on human rights in Vietnam. Under this agreement, Vietnam cannot arrest a labor leader for organizing a union. But they can plant drugs on him and arrest him for that purpose. Every human rights and labor rights activist in Vietnam knows that is true.

Wallach: Not contesting what Clyde just said, but legally, Victoria, the things to look at – because actually what you said is wrong as a legal matter is chapter nine of the TPP. That is the Investment Chapter and it establishes what is called the "Right of Establishment" to acquire, purchase, operate or establish an investment and it lists all the different things — real estate, infrastructure, government contracts for procurement. In those spheres, if a country stops

establishment by an investor from a TPP country, which could be one of the Chinese state-owned enterprise established in Vietnam - because the definition of a TPP investor just requires a firm is incorporated in a TPP party - then they are in violation of the agreement. Since the Dubai Ports World fight on the Oman Free Trade Agreement, every U.S. FTA's essential security exception, in the general exceptions chapter, has always had a footnote that explicitly said if any country raises the security exception, the tribunal shall accept that country's interpretation of what is its national security interest. That footnote, which should be in Article 29.2 of the TPP has been disappeared. It has been in every U.S. trade agreement since 2005. It is gone. You can see the legal analysis in the document on our website.

With respect to CFIUS, every country was given an opportunity to list its national security investment review board and its determinations as an exception to the right of establishment. Other TPP countries did so. All of those laws are listed as exceptions in Annex 9H of the TPP. The U.S. failed to take a listing for CFIUS. So Australia, etc. have listed their CFIUS-like laws. We did not.

The combination of those two provisions and what is missing from them, if anyone is paying attention to the rules, is really bad news for national security.

Sherman: It's Australia, Canada, Mexico and New Zealand that have listed their laws. We failed to list ours. So the CFIUS process, by our own deliberate inaction, is subject to second guessing by people who may not be U.S. citizens, have no responsibility for U.S. national security. CFIUS will know this, every time they make a decision, if this international panel of persons with no responsibility for or knowledge in U.S. security, rules against us, then we have to pay the spurned investor damages. So CFIUS, as I said, goes from watchdog to lapdog.

Even more important, and Lori brought this out, our sanctions policy depends on us being able to impose those sanctions because we think it's important for our national security. All our prior agreements for the last decade include that footnote, which says: *"for greater certainty, if a party invokes the national security exception in an arbitral proceeding initiated under Chapter 11 which is the Investment, or Chapter 22 the Institutional Provisions and Dispute Settlement, the tribunal or panel hearing the matter shall find the exception applies."* You raise it, the trade tribunal must determine that it's legitimate.

Now, anything we do for national security, including sanctions on terrorists, is subject to review by people with no understanding of U.S. national security, no responsibility for U.S. national security, and in almost all cases, a majority of them will not even be U.S. citizens, so they'll have no particular patriotic dedication to American national security.

Len Bracken, BloombergBNA

Yes, if I could just follow up on that, Representative Sherman, do you have any indication as to why the administration decided not to include that or had to negotiate that away?

Sherman: Wall Street hates anything that prevents them and their international partners from doing business just to protect America's national security. They successfully prevented us from having sanctions against Iran for two decades. They successfully prevented a George W. Bush administration from enforcing our existing sanctions laws, and they stopped sanctions laws from being passed for two decades. Who do you think writes this deal? Who's whispering in the ear of the people who write this deal?

The big picture items, perhaps, will be subject to some political scrutiny. But on the details — and we're down in the details now — like this, our negotiators are listening to Wall Street, and Wall Street sees this as an opportunity to unravel the two major provisions that allow national security to pollute and interfere with companies trying to make a profit. And that's why they got rid of the footnote I've referred to and that Lori's referred to, and that's why we deliberately didn't bother to do what others bothered to do, which was to list, in Annex 9H, our CFIUS process. We didn't get beat, we took a dive. And we took a dive deliberately, because the people with the real power in negotiating, particularly on the details of this agreement, hate the idea that corporate power or corporate profits would be interfered with just for our national security.

I've been up against the anti-national security corporate interests in this country for 20 years, I've lost more than I've won, and on these, we've lost two big battles.

Bracken

If I could follow up with all the panelists there, do you think TPP will be passed in 2016?

Sherman: If it happens, there'll be Christmas lights up. And I don't mean the ones that you haven't taken down yet, I mean the ones at the end of the year. Wall Street will have more power, and the people will have less power in Congress, in December 2016, than any time before that.

Wallach: Right now, for what it's worth, the numbers aren't there in the House, if you look at both Republican and Democratic dissatisfaction with different elements of the agreement. That's not to say a huge corporate campaign is not about to ensue.

Sherman: And look, I won't ascribe this to any particular member, but Wall Street has the huge amounts of money that our current campaign finance system creates a need for. And members could take huge contributions that they need to get reelected in November, and then reward the contributors in December by taking a vote in Congress that their constituencies strongly disagree with. I can't identify any particular member of Congress, but if somebody is trying to get reelected and that's the only thing they care about, they'll want to avoid voting on this deal before the election, take huge contributions, and then reward those contributors after the election.

Wallach: Thank you all very much, and for our speakers and the documents again are at Tradewatch.org.