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Make or Break: Obama Officials Start Trans-Pacific Partnership (TPP) Talks Today - First Obama Trade Deal?

Pressure is on for Administration's Trade Foray to Deliver the New American Trade Policy Obama Promised, not Continue Bush's NAFTA-With-Vietnam Model for TPP

The policy and political stakes are high as administration officials today begin negotiations for President Barack Obama's first potential trade agreement - the eight-nation Trans-Pacific Partnership (TPP). Negotiations will be held March 15-19 in Melbourne, Australia, with three additional rounds of negotiations scheduled for 2010, including a June session to be held in the United States.

The TPP negotiations are being closely watched because they have become the venue in which the Obama approach to trade pacts will be revealed. Broadly at issue is whether the new administration will use the TPP process to translate Obama's many specific campaign trade reform commitments into a new approach - or whether the administration will fall back on the trade agreement model used by the previous Bush, Clinton and Bush administrations. TPP talks were initiated by the Bush administration, which engaged in three rounds in 2008. A majority of House Democrats, including 12 full committee chairs and 58 subcommittee chairs (<http://www.citizen.org/documents/TRADEAct-AllCosponsors.pdf>), have made clear their expectations for any future trade pacts by sponsoring the Trade Reform Accountability Development and Employment (TRADE) Act. The legislation translates Obama's trade reform commitments into a new model for American trade pacts that are designed to achieve trade expansion under terms more consistent with Democrats' core policy goals of job creation, consumer safeguards and environmental protection.

Limited Prospects for Increased Exports?

Policywise, a key question is how the TPP talks connect to Obama's trade policy goal of doubling exports - and the linked goal of creating 2 million jobs. The U.S. already has free trade agreements (FTA) that zero out tariffs and maximize access for U.S. exports with the four countries (Australia, Singapore, Chile and Peru) that comprise more than 85 percent of the combined 1.6 trillion GDP of countries involved in TPP talks. Some in Congress have inquired why TPP talks are the best use of the limited resources of the Office of the U.S. Trade Representative (USTR)

(<http://cms.citizen.org/documents/Letterfromsenatorstokirk.pdf>;

<http://cms.citizen.org/documents/TPPFTALettertoKirk.1-2010.pdf>). USTR hopes other

countries would join the any TPP pact that results. However this would require such a TPP agreement to contain significantly altered terms relative to past U.S. FTAs; past attempts to directly negotiate pacts with Malaysia and Thailand and approaches to Indonesia failed over objections in those nations to NAFTA-style investment, intellectual property and procurement terms.

And what is the prospect for U.S. job creation from zeroing out tariffs with the other three remaining TPP nations (Vietnam, Brunei and New Zealand)? On the export demand side, Vietnam's GDP is \$91 billion with a per capita annual income of \$1,024; while on the import side, Vietnam is increasingly becoming a lower-wage-than-China export platform for multinational firms' production. The population of Brunei is 388,000 - half that of Milwaukee - with a GDP of \$11.5 billion. The population of New Zealand is 4,359,000 - half that of New York City - with a GDP of \$112 billion, which equates to the GDP of Utah or less than half of Maryland.

Vietnam and Brunei Labor and Human Rights Problems

Moreover, two prospective TPP countries - Vietnam and Brunei - are undemocratic and have serious human and labor rights problems - a point noted by Ways and Means Committee Democrats, among others. The State Department's 2009 Report on Human Rights Practices noted that workers in Vietnam are prohibited from joining or forming any union that is not controlled by the government. On political freedoms, the State Department reported that "[t]he government [of Vietnam] continued to crack down on dissent, arresting political activists and causing several dissidents to flee the country." In Brunei, there is virtually "no trade union activity in the country and there is no legal basis for either collective bargaining or strikes," according to the International Trade Union Confederation. Some observers have suggested that the TPP must include a democracy clause that would require parties to have democratic forms of government. The imperative for effective labor standards in any Obama trade pact will be complicated not only by Vietnam and Brunei's inclusion in the talks, but by the reality that Singapore's leaders and Chile's new conservative government may not be willing to improve on the lax labor provisions in their existing U.S. FTAs.

TPP "Spaghetti Bowl" of 11 Existing FTAs With Different Terms

The first issue the Obama team will face in TPP talks is what form a possible TPP would take. The context of the TPP is that the United States, Australia, Vietnam and Peru are seeking to join negotiations on the expansion of an *existing* 2006 pact between Singapore, New Zealand, Chile and Brunei called the P-4. However, the existing P-4 text is a NAFTA-style pact, minus even NAFTA's unenforceable labor and environmental terms, that does not reflect Obama's campaign commitments to trade reform[1] or the position of many congressional Democrats. Thus, many congressional Democrats and base groups are calling for TPP talks to begin with a clean slate - creating a new agreement that would replace the P-4. The USTR has stated that this is its intention. However, there are 11 other trade agreements between the various proposed TPP partners - a "spaghetti bowl" of differing rules - that include various provisions to which various countries are wed. For instance, extremely controversial immigration provisions in the existing agreements with Chile and Singapore provided new "FTA visas" (5,400 per year from Singapore and 1,400 for Chile) that Congress insisted never be replicated in future pacts. The Australia FTA does not include the controversial investor-state enforcement system that allows private investors and firms to directly demand compensation from governments in foreign tribunals over domestic regulations they believe undermine their FTA investor rights.

AGREEMENTS AMONG TPP NEGOTIATING PARTNERS		
Agreement	Signing date	Entry into force
U.S.-Peru Free Trade Agreement	April 12, 2006	February 1, 2009
U.S.-Chile Free Trade Agreement	June 6, 2003	January 1, 2004
U.S.-Singapore Free Trade Agreement (USSFTA)	May 6, 2003	January 1, 2004
Australia-U.S. Free Trade Agreement (AUSFTA)	May 18, 2004	January 1, 2005
Singapore-Australia Free Trade Agreement (SAFTA)	February 17, 2003	July 28, 2003
Australia and New Zealand Closer Economic Relations		January 1, 1983
Australia-Chile Free Trade Agreement	July 30, 2008	March 6, 2009
ASEAN-Australia-New Zealand FTA (AANZFTA) (includes Brunei, Burma, Malaysia, the Philippines, Singapore and Vietnam)	February 27, 2009	January 1, 2010
Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP)	November 14, 2000	January 1, 2001
Peru-Singapore Free Trade Agreement (PeSFTA)	May 29, 2008	August 1, 2009
Peru-Chile Free Trade Agreement	August 22, 2006	March 1, 2009

Plus, the P-4 was envisioned as a "docking agreement" that other countries could join after the agreement went into force. Might the TPP be structured similarly? And, if so, what would be Congress' future role in approving countries seeking TPP accession?

Continuing Bush's TPP Approach? Or A New Model?

The United States has FTAs with four of the prospective TPP countries - Australia, Chile, Peru and Singapore - that have varying terms. Only the Peru FTA includes certain initial reforms to labor, environmental and access-to-medicine patent rules made in 2007 after a deal with then-President Bush and some congressional Democrats. Yet a majority of Democrats opposed the Peru FTA because its labor provisions explicitly forbade reference to the International Labor Organization's (ILO) Conventions and it still contained NAFTA-style investment, procurement and other terms. The U.S.-Australia FTA is alone among the four in not having private investor-state enforcement, a reform that many congressional Democrats have demanded of all trade agreements. Yet, all four pacts contain the substantive foreign investor terms that many congressional Democrats have opposed. The TRADE Act provisions laying out what American trade pacts must and must not include provide a guide for negotiating any prospective TPP that could obtain wide support. Congressional Democrats and their constituents have been clear in their demand for a new trade model that it must ***build upon past trade pact improvements***. That is to say it must build upon the labor and environmental standards reforms and access-to-medicines patent rules improvements included in the text of the Peru FTA. In addition to extending to other countries the Australia FTA's standard of not including private investor-state enforcement of foreign investor privileges, a prospective TPP pact must provide for substantive reforms to investment rules - and deal with the procurement, service sector regulation, import safety and other issues that have been the basis for Democrats past opposition to NAFTA-style pacts.

Politically, A New Model Is Needed To Rebuild Democratic Support

At issue for an administration that promotes bipartisanship is whether the administration can formulate a new trade pact model that can garner support from congressional Democrats and key environmental, labor, family farm and consumer constituencies. The need to break from the past is made more pointed because TPP talks were initiated by the George W. Bush administration, which engaged in three rounds of negotiations in 2008. The bipartisan consensus marking decades of U.S. trade agreement votes was shattered with the 1990s advent of the NAFTA model of trade pacts. The NAFTA model newly included foreign investor rights that promote offshoring of production, caps on import safety and inspection

standards, limits on domestic procurement policies and mandates for the deregulation of financial and other services. Since then, trade pacts have been passed by overwhelming GOP majorities and an increasingly limited number of Democratic votes - an approach that has serious negative political and policy ramifications that the Obama administration seems keen to avoid.

TPP Cannot Be A NAFTA With Vietnam

That polling results show bipartisan opposition to the current trade regime is not surprising, given since NAFTA and the World Trade Organization went into effect the U.S. has lost net five million manufacturing jobs (one of four in that sector), median wages have remained flat despite productivity gains, and unsafe food and product imports have flooded the U.S. market as the trade deficit has exploded. Senior White House officials quashed 2009 efforts by the USTR to push through Congress several trade pacts left over from the Bush era that are based on the NAFTA model. Democrats in Congress have worked to formulate a new trade pact model, presented in the TRADE ACT now sponsored by a majority of House Democrats, including most full committee chairs. That the Bush administration initiated the TPP talks creates a special imperative for the Obama administration to create a new approach to the TPP, in cooperation with Congress and interested Democratic constituencies.

Background and Timeline: TPP and U.S. Participation

Shortly after the passage of NAFTA in 1993, the Clinton administration launched initiatives to establish NAFTA-style "free trade" blocs that would encompass the Western Hemisphere and the Asian-Pacific region. Negotiations for an Asian Pacific regional FTA were proposed at the Asian Pacific Economic Cooperation (APEC) summit in Bogor, Indonesia, in 1994. However, the plans for both the Free Trade Area of the Americas (FTAA) and the APEC FTA unraveled, as major countries in each region came to loggerheads over the agreements' scopes and the model on which the pacts should be premised. With respect to APEC, this included Japan, Malaysia, Indonesia and others.

In late 2000, three of the APEC countries (Singapore, New Zealand and Chile) that were interested in pursuing the APEC concept of a regional Asian-Pacific FTA launched talks to establish what was formally called the Trans-Pacific Strategic Economic Partnership Agreement, or the Pacific-3 (P-3). Brunei later joined the P-3 talks. In 2006, an FTA, sometimes called the P-4 but formally named the Trans-Pacific Strategic Economic Partnership Agreement took effect. Its text was similar to NAFTA except it did not even include labor and environmental side pacts and did not include chapters on financial services and investment.

The U.S. Joins, and P-4 becomes TPP under Bush in 2008: Built into the P-4 text was an agreement to restart talks started in 2008 on financial services and investment issues. The Bush administration entered these talks and participated in three rounds of negotiations.[2] In September 2008, the Bush administration notified Congress that it would expand its participation beyond the two sectoral issues and start negotiations to become a full member of the agreement, which was identified as the Trans-Pacific Partnership.[3] The Bush USTR sent a second TPP notice to Congress in December 2008, expanding the list of partners to include Australia, Vietnam, and Peru.[4]

Obama administration and TPP: On Jan. 26, 2009, shortly after Obama's inauguration, the USTR published in the Federal Register a "Notice of intent to initiate negotiations on a Trans-Pacific Partnership (TPP) free trade agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, request for comments, and notice of public

hearing."^[5] Shortly thereafter, on Feb. 24, the Obama administration asked the TPP negotiating parties to delay indefinitely the negotiations that were scheduled for March 30, so that the new administration could appoint officials to the USTR and then review its trade policy.^[6] On May 18, following a speech at the U.S. Chamber of Commerce, USTR Ron Kirk told reporters that, at a minimum, the USTR would pursue a TPP agreement in the Obama administration.^[7] After Kirk's comment, however, the Office of the USTR made it clear that no decision had formally been made and the White House offered "no comment" to reporters regarding the matter.^[8] On Nov. 14, Obama announced during a speech in Japan: "The United States will also be engaging with the Trans-Pacific Partnership countries with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement."^[9] On Dec. 14, Kirk sent letters to House Speaker Nancy Pelosi and Senate President Pro Tempore Robert Byrd notifying them of plans to initiate negotiations to form a TPP.^[10]

ENDNOTES

[1] Public Citizen, "Selected Campaign Statements by President Barack Obama on U.S. Trade and Globalization Policy," 2008, Available at: <http://www.citizen.org/documents/ObamaTradeCampaignStatementsFINAL.pdf>

[2] Office of the USTR, "United States to Negotiate Participation in Trans-Pacific Strategic Economic Partnership," Fact Sheet. September 2008, Available at: http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Fact_Sheets/asset_upload_file602_15133.pdf

[3] "Letter from Susan C. Schwab to the Hon. Nancy Pelosi, Speaker, U.S. House of Reps.," Sept. 22, 2008, Available at:

[http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_\(Letters,_etc\)/asset_upload_file775_15142.pdf](http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_(Letters,_etc)/asset_upload_file775_15142.pdf)

[4] Susan Schwab, "Letter from Susan C. Schwab to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives", December 30, 2008, Available at:

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[5] USTR, "Request for Comments and Notice of Public Hearing: Proposed Trans-Pacific Partnership Free Trade Agreement," Fed. Reg., (Vol. 74, No. 15), Jan. 26, 2009 <http://www.thefederalregister.com/d.p/2009-01-26-E9-1515>

[6] Inside U.S. Trade, "U.S. Delays TPP Talks to Allow Obama Cabinet Members to Take Office," Feb. 24, 2009.

[7] Inside U.S. Trade, "Kirk TPP Endorsement Precedes Formal Administration Decision, Panama FTA Efforts Slowing", May 20, 2009.

[8] Ibid.

[9] The White House, "Remarks by President Barack Obama at Suntory Hall," Nov. 4, 2009,

<http://www.whitehouse.gov/the-press-office/remarks-president-barack-obama-suntory-hall>

[10] Ron Kirk, "Congressional notifications of intent to negotiate a TPP," U.S. Trade Representative, Dec. 14, 2009, Available at: http://www.ustr.gov/webfm_send/1559. See also: Mark Drajem, "Obama Tells Congress U.S. Will Pursue Asia Trade," *Bloomberg*, Dec. 14, 2009, http://www.bloomberg.com/apps/news?pid=20601080&sid=adZmd0gKa_sg