

# WEREWOLF

## Gordon Campbell on what John Key should be asking Joe Biden

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No doubt, US Vice-President Joe Biden will be updating Prime Minister John Key on the chances of a TPP vote taking place in the ‘ lame duck ’ session of Congress that’s held between the November’s election and the inauguration of a new President in January. Whether there will be a vote on the TPP isn’t the point, though. Key needs to be asking Biden about how – and why – the White House is busily circumventing the TPP deal signed in Auckland earlier this year.

Basically, the Obama White House is overturning two aspects of the TPP deal that every other TPP member country thought it had signed up to:

(a) the data localisation requirements whereby US financial services companies must retain on local servers the data they hold on citizens of a particular country. This commitment is an obvious data privacy safeguard. US firms now want it overturned.

(b) to placate the Republicans it needs to pass the TPP, the Obama White House appears intent on changing the patent period for the expensive new class of pharmaceuticals. During the TPP negotiations, the concessions made in other areas by New Zealand and Australia were grounded in the belief that they had tied the Americans down on biologics to a five year period of marketing exclusivity. Here’s what Aussie Trade Minister Andrew Robb **said at the time last year**:

*Robb, who had described it as a red-line issue in negotiations, says: “The government has delivered on its promise not to change Australia’s existing five years of data protection for biologic medicines or any other part of our health system, including our pharmaceutical benefits scheme. Concerns that the price of medicines would increase have proven to be absolutely unfounded.”*

Now, the US is unwinding those commitments. Out the window with them goes the claim by governments that the TPP deal won’t significantly increase the price of medicines.

How is the US doing this? The data localisation changes are being made outside of the TPP text itself. Via a separate deal called TISA – the Trade in Services Agreement – the US will (later this year) seek to nullify the commitment made under the TPP to tie US financial service multinationals down to retaining in-country the financial data it holds on the citizens of TPP

member countries. . Good luck in future with locating where your data is held, **much less being able to access it or prevent its misuse.**

*The Obama administration is close to presenting to congressional trade committees its proposal for shielding the financial services industry from data localization requirements under the Trans-Pacific Partnership....*

*Following that, the administration will vet the proposal with cleared advisers before trying to introduce it in ongoing trade negotiations like the Trade in Services Agreement (TISA). The next TISA negotiating round kicks off at the end of next week, but it is unclear if participants can strike a deal this year as the U.S. wants.*

*U.S. Trade Representative Michael Froman, in a June 30 speech to the Cato Institute, signalled that the data fix issue is on the way to being resolved domestically. "I think where that is heading has basically been resolved in a positive way and we're seeing that come to a close,"*

Again, to be specific on what's involved here:

*The proposal as described by administration officials would prohibit U.S. and foreign regulators from imposing barriers to cross-border data flows and data localization requirements on financial services firms. Its text would allow for an exception if regulators can prove they cannot gain access to company data they need for legitimate regulatory and supervisory functions.*

Four TPP member countries – Vietnam, Malaysia, Singapore and Brunei – are not part of TISA, so the US will have to carry out a data localisation “fix” with those four countries bilaterally.

Essentially though...a provision in the TPP financial services chapter that enabled citizens to have their data held locally ( as of right) has become a situation where in future, member governments will have to make a case that their regulatory requirements qualify them to access this data, but only as a last resort exception.

### **The biologics switcheroo**

The conflict (over the marketing exclusivity period for biologics drugs) between the White House and the House Ways and Means Committee Chairman Orrin Hatch – a Republican – is proving far more difficult to resolve. A blatant rewrite of the TPP swill be required, rather than a circumvention of the TPP by other means. So far, Hatch has been insisting that a new and extended biologics term – he's talking about twelve years, rather than the five years we thought we'd negotiated – will need to be attached as 'side letters' to the TPP document itself.

Of course, no one really expects our dim-bulb Trade Minister Todd McClay to remember if he knows anything about any of this. The Aussies have been far more alert to the danger. In early May, Australian ambassador Joe Hockey **wrote to the US Trade Representative Michael Froman and to US business lobbyists about his concerns:**

*Renegotiation of the [TPP] agreement in any form or in some other form of additional commitment is not an option and would jeopardize approval [of the deal] by the other TPP countries,” Australian Ambassador Joe Hockey wrote in a May 5 letter to U.S. business groups, with a copy to U.S. Trade Representative Michael Froman. He said he hopes the U.S. will “not seek to renege on the commitments it made when the TPP deal was struck in Atlanta in October 2015, and then signed in Auckland in February 2016.”*

*.....The ambassador’s message is at odds with demands being made by Senate Finance Committee Chairman Orrin Hatch (R-UT), who **has publicly stated** that “side agreements and other approaches” could resolve his complaints about the insufficient period of marketing exclusivity for biologic drugs. Hatch has demanded that biologics be protected with 12 years of marketing exclusivity, a length of time longer than what is required under TPP.*

*The White House and Hatch have not been able to reach a compromise, and some pro-TPP sources this week said it is hard to see how one would be reached. In addition, Australia has not been approached by USTR regarding implementation issues, including biologics, sources said.*

So where are now at on the biologics issue? Looking at twelve years. Not the five years that we – and the Australians – hailed as one of our major TPP victories. **Here’s Orrin Hatch, as of July 14.**

*Senate Finance Committee Chairman Orrin Hatch (R-UT) on July 12 said negotiations with the Obama administration over market exclusivity for biologic drugs in the Trans-Pacific Partnership are at a standstill, but added that President Obama in a closed-door meeting floated the possibility that he would be willing to give in to Hatch’s demands.*

*“I did meet with [Obama] and he indicated some ‘give’ down in the White House,” Hatch told Inside U.S. Trade....”It’s kind of at a standstill,” Hatch said. “They need to go to 12 years. He knows that we have to solve the problem.” When asked about the chances for his demands to be met, Hatch said he believes 12 years are on the table....*

*The senator’s push for 12 years of market exclusivity stands in contrast to provisions in the TPP, which would require participants to comply with one of two options, the first of which is to provide at least eight years of exclusivity. The second option is to provide five years of exclusivity and undertake additional regulatory measures that U.S. officials say should effectively extend that protection to eight years. Hatch last month rejected a proposal floated by the Obama administration that sought to assure members of Congress that TPP provides eight “real” years of data exclusivity, which Hatch said he could not live with.*

These blatant, alarming changes to the meaning of the TPP are what Key needs to be raising with Biden. Some questions for Key himself....does he think financial services companies should have to comply with the data localisation requirements set out in the TPP text, or not ? Does Key believe the marketing term for biologics under the TPP is five years, eight years or twelve years ? Have the Americans informed him that they’re engaged in changing the marketing exclusivity period for biologics to 12 years ? What extra costs to Pharmac does Key think a 12 year term for biologics would entail ?

Key and his then Trade-Minister Tim Groser assured us that the TPP would be a high quality trade deal for the 21st century. It now seems that it will be superseded even before it comes into effect. That's assuming these desperate back-end scramblings by the Obama White House do manage to get the TPP passed in December, by legislators who will not be around to live with its consequences. Some deal, some mandate. Apparently, it requires a lame duck to pass a turkey.

## **Refugees**

Some information **renders any further comment unnecessary.**

*The six wealthiest countries in the world, which between them account for almost 60% of the global economy, host less than 9% of the world's refugees, while poorer countries shoulder most of the burden, Oxfam has said. According to a report released by the charity on Monday, the US, China, Japan, Germany, France and the UK, which together make up 56.6% of global GDP, between them host just 2.1 million refugees: 8.9% of the world's total.*

*Of these 2.1 million people, roughly a third are hosted by Germany (736,740), while the remaining 1.4 million are split between the other five countries.... In contrast, more than half of the world's refugees – almost 12 million people – live in Jordan, Turkey, Palestine, Pakistan, Lebanon and South Africa, despite the fact these places make up less than 2% of the world's economy.*

## **Pylon, Remembered**

Athens, Georgia has produced a lot of great music over the past 30 years – REM, the B 52s, Neutral Milk Hotel, Jim White, Vic Chesnutt etc etc – but Pylon holds a special place in Athens' musical mythology. For a brief period in the early 1980s they were the top band in town, and their electronic dance pop influenced plenty of alt-rock musicians who came after them. *Gyrate* and *Chomp* are the two essential albums. This month, a live album of one of their early 1980s gigs **has just been released.**

Plenty of great tracks in the Pylon repertoire to choose from, but their "Crazy" single has always been a personal favourite, with a great vocal by Vanessa Briscoe Hay. Pylon's guitarist Randall Bewley (who died of a heart attack in 2009) was the band's other major talent.