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Free Trade Disagreement

By Thomas B. Edsall
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The Obama administration's negotiations over the [Trans-Pacific Partnership](#), a 12-nation trade agreement, have become a test of the compatibility of globalization with the increasing expectation among democratized populations of transparency in government.

The secrecy surrounding the current discussions, which [began in 2010](#), has angered traditional critics of free trade, including the AFL-CIO, Public Citizen and the Sierra Club, but also some of its most ardent backers, including Senator Ron Wyden, an Oregon Democrat, Darrell Issa, a Republican congressman from California, and [Jagdish Bhagwati](#), a professor of law and economics at Columbia who is [a leading expert](#) on world trade.

If successful, the TPP agreement would eliminate most remaining tariffs on nearly \$2 trillion in goods and services exchanged between the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The TPP negotiations, which in the United States pit international corporations against organized labor, would go far beyond lowering tariffs, with [provisions](#) requiring countries to maintain compatible regulatory regimes, facilitate corporate financial transactions, establish copyright and patent protections to govern intellectual property rights and to safeguard foreign investors.

Forbes, a pro-free trade publication, [warned on Dec. 13](#) that critics of the Trans-Pacific Partnership agreement are gaining the upper hand:

“Characterizations of TPP as secretive, corporatist, undemocratic, unconstitutional, anti-poor, pro-tobacco, job-killing, and a threat to public health and safety have begun to stick and have energized opposition from activists who suspect the agreement is an effort to circumvent the domestic democratic process.”

There is a [strong historical case](#) to be made that the economic benefits of free trade outweigh the substantial costs. At the same time, free-trade agreements clearly do have a corporatist dimension that is highly vulnerable to pressure from special interests.

Members of Congress on both sides of the aisle have voiced anger over their limited access to negotiation proceedings. This anger began to boil over almost two years ago, but it is still simmering.

On the Democratic side, Senator Wyden is the chairman of the Finance Subcommittee on International Trade Customs and Global Competitiveness and [a supporter](#) of past free trade deals. He has voted for trade accords with Colombia, Korea, Panama, Morocco, Australia and Chile. But in May 2012 Wyden took the floor to [attack the Obama administration](#):

“The majority of Congress is being kept in the dark as to the substance of the TPP negotiations, while representatives of U.S. corporations – like Halliburton, Chevron, PHRMA, Comcast, and the Motion Picture Association of America – are being consulted and made privy to details of the agreement. As the Office of the USTR [U.S. Trade Representative] will tell you, the President gives it broad power to keep information about the trade policies it advances and negotiates secret. Let me tell you, the USTR is making full use of this authority.”

That same month, Issa, chairman of the House Oversight Committee, [unilaterally released](#) what had been the administration’s secret position on intellectual property rights, one of the most contentious subjects under negotiation. Issa wrote:

“At a time when the American people and Internet users all around the world are rightfully wary of any closed-door negotiations that could adversely impact their ability to freely and openly access the Internet, the Obama Administration continues to pursue a secretive, closed-door negotiating process for the Trans Pacific Partnership. I have decided to publish the intellectual property rights chapter of TPP so that the public can provide input to those negotiating this agreement, and to push this Administration – and the federal government as a whole – to be open, transparent and inclusive when it comes to international intellectual property rights agreements that have potentially serious consequences for the Internet community.”

Issa and other members of Congress have voiced concerns that the leaked versions of TPP suggest that the United States is promoting Internet policies that Congress specifically rejected in January 2012, when [the House killed](#) the Stop Online Piracy Act.

More recently, warnings over the problems of trade negotiations, especially over the lack of transparency, are coming from unexpected quarters.

[Bhagwati](#) described the procedures governing the TPP negotiations as “ludicrous,” noting that the secrecy surrounding the talks makes it difficult for the administration to win critically important congressional approval of voting on the TPP under special (“[fast track](#)”) rules barring any amendments or filibusters.

Joseph Stiglitz – an economist at Columbia and [a contributor](#) to these pages – provided [a particularly illuminating list](#) of policies that he argues negotiators should explicitly reject, including: mandates for the extensions of patent terms; mandates for the granting of patents on surgical procedures; monopolies of 12 years on test data for biologic damages; increased damages for infringement of patents and copyrights; the requirement of life plus 70 years of copyright protection; and mandates for excessive enforcement measures for digital information and other restrictions on the dissemination of knowledge.

The Electronic Frontier Foundation, a leading nonprofit advocate of open access on the Internet, [argues](#) that under a cloak of secrecy, the TPP,

“raises significant concerns about citizens’ freedom of expression, due process, innovation, the future of the Internet’s global infrastructure, and the right of sovereign nations to develop policies and laws that best meet their domestic priorities. In sum, the TPP puts at risk some of the most fundamental rights that enable access to knowledge for the world’s citizens. The US Trade Rep is pursuing a TPP agreement that will require signatory countries to adopt heightened copyright protection that advances the agenda of the U.S. entertainment and pharmaceutical industries agendas, but omits the flexibilities and exceptions that protect Internet users and technology innovators.”

A spokesperson for Michael Froman, the [United States Trade Representative](#), disputed the idea that there was excessive secrecy over trade negotiations and contended that the administration has at least partially opened up details of potential forthcoming agreements to members of Congress and key committee staffers:

“Members of Congress, as the people’s representatives, and staff for our Congressional committees of jurisdiction see and advise the Executive Branch not only on U.S. proposals, but also negotiating text for the TPP. Negotiators are available to walk Members and committee staff through that text and have done so on request. Moreover, USTR regularly briefs additional Congressional staff on the negotiations and U.S. approaches, taking input there as well. All told, we’ve held more than 1,100 briefings on Capitol Hill on TPP alone.”

These efforts have not satisfied Wyden. On Feb. 4, the Oregon senator sent an email response to my inquiry:

“Right now, because of the shroud of secrecy, it is impossible for the public to be informed of what’s at stake in potential trade deals like the TPP. This secrecy and lack of informed public input makes it difficult for Congress to oversee and direct trade negotiations. There must be fundamental changes to the USTR’s approach to transparency and Congressional consultation for the President’s trade agenda to advance.”

Froman’s spokesperson, who declined to be identified by name, argued that outside groups are able to present their views on trade negotiations through a system of so-called advisory committees.

The seemingly neutral term “advisory committee” serves to obfuscate the immense influence of commercial interests with privileged access to the formation of the trade policy of the United States.

The advisory committees within the United States Trade Representative are part of [a three-level structure](#). Privileged corporate interests dominate both the first level and the crucial third level.

four labor union presidents on the first level, as well as a representative of the Environmental Defense Fund, Fred Krupp. The 20 corporate management representatives on this level include

business heavyweights like John Surma, the former C.E.O. of U.S. Steel, and Robert Stevens, the executive chairman of Lockheed Martin.

At the second level, there are four more advisory committees, including a 23-member labor committee made up of union presidents, a 19-member trade and environment policy committee, an intergovernmental policy committee and a committee on issues related to Africa.

The most important committees are in fact at the third level (ostensibly the bottom) — the 16 Industry Trade [Advisory Committees](#) and six agricultural advisory committees. These committees are the [most active](#) and involved in the minute details of trade agreements.

The range of influence of these 16 third-level industry trade advisory committees is reflected in their subject areas, running the gamut from Aerospace Equipment to Chemicals, Pharmaceuticals, Health Science Products and Services to Information and Communications Technologies, Intellectual Property Rights, and Steel.

All 19 members of the steel advisory committee are, for example, industry executives, nine of them steel corporation presidents, C.E.O.'s or chairmen, or a combination of the three. There are no labor, environmental or consumer representatives on any of the 16 industrial advisory committees.

The third-level advisory committees are entirely dominated not only by industries seeking special advantage in trade negotiations, but also by well-established corporations and trade associations with strong incentives to support policies restricting the emergence of new competitors and innovators.

Interestingly, one of the few institutions equipped to shed light on trade negotiations – the media – has cut back on coverage of trade issues.

Lori Wallach, director for the past two decades of Public Citizen's Global Trade Watch, responded by email to my inquiry about news coverage of trade:

“During NAFTA/WTO, there were trade beat reporters at every major national outlet and many of the bureaus of decent-sized regionals. But now trade is one of, say, four or five subjects assigned to a reporter at a national print outlet. The Wall Street Journal is the exception to the rule - they have a full time trade beat reporter and so do Reuters and Bloomberg.”

The diminished news coverage comes at a time when the scope of trade agreements has grown tremendously. These agreements go well beyond traditional market access issues of tariffs and quotas to become de facto industrial policies.

According to the World Trade Organization, [regional trade agreements](#) “tend to go far beyond tariff-cutting exercises. They provide for increasingly complex regulations governing intra-trade (e.g., with respect to standards, safeguard provisions, customs administration, etc.) and they often also provide for a preferential regulatory framework for mutual services trade. The most

sophisticated RTAs go beyond traditional trade policy mechanisms, to include regional rules on investment, competition, environment and labor.”

On Sept. 8 last year, Senator Elizabeth Warren of Massachusetts declared in [a speech](#) to the AFL-CIO:

“Why are trade deals secret? I’ve heard people actually say that they have to be secret because if the American people knew what was going on, they would be opposed. Think about that.”

Warren is right. Trade negotiations have, in fact, become so wide in scope, with so many losers and winners, that negotiations cannot be conducted in the open.

The case of trade reflects a larger shift in the balance of power. As multinational or “stateless” capital diminishes the sovereignty of individual countries, including the United States, and strengthens the autonomy of international corporations, it weakens the already fragile economic security of millions of out-of-work Americans. Their plight appears to be unheeded in the world of “advisory committees.” One can only fear what comes next.