

# POLITICO

## Elizabeth Warren's next target: Trade deals

**The senator says Obama's Trans-Pacific Partnership would empower corporations.**

Ben White

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Elizabeth Warren is gearing up for another big fight with the Obama administration, this time over trade.

The Massachusetts senator is stepping up her criticism of the administration's proposed Trans-Pacific Partnership, a centerpiece of the president's second-term agenda, saying it could allow multinational corporations to gut U.S. regulations and win big settlements funded by U.S. taxpayers but decided by an international tribunal.

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"This deal would give protections to international corporations that are not available to United States environmental and labor groups," Warren said in an interview with POLITICO. "Multinational corporations are increasingly realizing this is an opportunity to gut U.S. regulations they don't like."

Warren's comments, following an op-ed in The Washington Post, focused on an obscure piece of the TPP agreement, the so-called Investor-State Dispute Settlement process, which allows multinational corporations to sue national governments in international forums and win cash judgments that cannot be appealed.

Ordinarily such a wonky provision might fly deeply under Washington's radar. But Warren has proved highly adept at elevating relatively obscure issues and turning them into major causes with just a few choice words.

Her opposition to President Barack Obama's choice of a Wall Street banker for the No. 3 slot at Treasury quickly turned the generally low-profile post into a national issue and created a major backlash. The nominee, Antonio Weiss, eventually asked that his name be withdrawn and took a lower-profile, non-confirmed post at Treasury.

Opponents of Obama's trade agenda seized on Warren's new comments and said they raised the profile of the opposition and made defeating the deals more likely. The administration is asking Congress for "fast-track" status for the TPP, meaning that lawmakers wouldn't be able to amend the deal, only vote up or down on what the administration negotiates.

“Having a champion for working families and the environment speaking up like this against parts of TPP sends a real signal to the rest of Congress,” said Ilana Solomon, director for The Sierra Club’s “Responsible Trade” program. “If you are on the side of helping the environment and working families and taking a stand against corporate power, you have to be against fast-track and TPP as well.” Solomon added that Warren was moving strategically to “elevate these issues at a critical moment when fast track and other trade agreements are coming to a head in Congress.”

Administration officials say they always expected Warren, who enjoys strong backing from labor and environmental groups, to be firmly opposed to the TPP agreement. And they say her comments are not really new. In addition, they reject her concerns about ISDS and note that the U.S. currently is party to 50 trade agreements that include the structure.

They say the U.S. has never lost a case when challenged by a multinational company over a U.S. law or regulation. Instead, they said ISDS is included to ensure that U.S. companies investing abroad in countries with less-developed legal systems can have some confidence that their basic rights will be protected.

Despite the private dismissals, the White House clearly felt compelled to quickly respond to Warren’s complaints, posting a piece on its blog by National Economic Council Director Jeffrey Zients.

“The purpose of investment provisions in our trade agreements is to provide American individuals and businesses who do business abroad with the same protections we provide to domestic and foreign investors alike in the United States,” Zients wrote. “ISDS does not undermine U.S. sovereignty, change U.S. law, nor grant any new substantive rights to multinational companies.”

Warren rejected all of those arguments in the interview with POLITICO, noting that just because the U.S. has not lost a case before an ISDS arbitration panel yet does not mean it will not lose one in the future. She also noted that the number of cases before ISDS panels has been rising rapidly. “I take no comfort in the fact that the U.S. has not lost a case yet,” she said. She added that a multinational company could sue the U.S. before an ISDS panel over U.S. wage or environmental rules they view as unfair and win a large settlement billed to the U.S. Treasury. Administration officials say the way they are drafting ISDS in the TPP agreement would make such outcomes impossible. Administration officials note that the number of U.S. ISDS cases is actually going down.

But Warren also slammed what she called a lack of transparency in the TPP drafting process, saying it was very hard for members of Congress or anyone else to know what is in the latest draft of the agreement, making assurances from the White House difficult to trust.

Administration officials note that any member can view the latest version of the agreement in a classified setting. They also note that letting drafts become public would make it much harder for U.S. Trade Representative Mike Froman and others to negotiate the best possible terms for the U.S. They say that once the document is finalized, members and the public will have plenty of time to review it before any final vote.

It is unclear how much Warren's opposition will change the political calculus on gaining fast-track authority for TPP. The White House, backed by many prominent Republicans including House Ways and Means Chairman Paul Ryan and Senate Finance Committee Chairman Orrin Hatch, wants to obtain fast-track relatively soon to help speed the process of finalizing TPP.

The administration argues that the dozen or so nations that could sign on to TPP, including Australia, Japan, Singapore Vietnam and others, would be less likely to do so if they think Congress could amend the agreement before a final vote. Fast-track authority would make that impossible. Instead, members of Congress would have to lobby the administration to make changes before the final vote.

The administration is hoping for a fast-track bill to emerge from the Senate Finance Committee soon and then go to the floor. They believe they could pass the measure with mostly Republican support and a handful of Democrats. Senate Minority Leader Harry Reid has signaled his opposition to new trade deals but also said he would not block the administration's agenda.

Obama has lobbied Democrats hard on the trade deals, saying they will let the U.S. set high standards for labor and environmental regulations in the Pacific Rim while opening new markets to U.S. exporters. In the absence of TPP, the White House argues, China will dictate the terms of Pacific trade with far lower — or nonexistent — standards.

The administration, with few hopes for significant legislative victories with the GOP-controlled Congress — hopes TPP will be a centerpiece accomplishment of Obama's second term. And officials remain confident in the path forward for TPA and TPP with largely Republican support and just enough Democrats to make up for any GOP defections.

Still, Warren's ability to rally progressives could make the math of getting the deals done more challenging. In her Post op-ed and comments to POLITICO, she also argued that conservatives who generally oppose ceding any U.S. sovereignty to international bodies should also rally against the Pacific trade agreement.

“Conservatives who believe in U.S. sovereignty should be outraged that ISDS would shift power from American courts, whose authority is derived from our Constitution, to unaccountable international tribunals,” Warren wrote in the Post.

And her efforts are already succeeding to some degree.

In a blog post on Thursday, Daniel Ikenson of the libertarian Cato Institute, wrote that Warren was correct in her opposition to ISDS, though he stopped short of full opposition to the trade agreement over inclusion of the international tribunal.

“In substance, if not style, Sen. Warren's perspective on ISDS is one that libertarians and other free market advocates should share,” Ikenson wrote. “As a practical matter, investment is a risky proposition. Foreign investment is even more so. But that doesn't mean special institutions should be created to protect [multinational corporations] from the consequences of their business decisions.”

Proponents of the trade deals in Washington reacted with concern over Warren's comments. But several said they did not think the Massachusetts senator would be able to rally enough opposition to kill the deals. "I don't know if she moves people on this or not. I feel like I can make a case either way," one Washington operative said, asking not to be identified so as not to anger Warren. "Recent history says she could be a real problem, but the lines are different on trade."

Some pro-trade Democrats were privately dismissive of Warren's arguments, saying the senator was stoking unrealistic fears.

"Trade opponents use ISDS to stoke protectionist fears but always conveniently leave out the fact that the U.S. is already party to 50 ISDS agreements across the globe, and has never lost a single challenge," one Democrat said. "Throwing out ISDS based on trade opponents' nightmare scenarios would be like tearing down the entire U.S. judicial system because someone sued Starbucks over spilling hot coffee."