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Singapore | 31 Oct 2014

The Trans Pacific Partnership: Eluding Obama's Grasp

*By Vandana Prakash Nair**

EXECUTIVE SUMMARY

- The Obama administration is unlikely to ratify the Trans-Pacific Partnership (TPP) before its term ends in 2016 unless key negotiations are concluded by the beginning of next year.
- However, domestic forces across the political spectrum in the United States are lined up against granting President Obama the fast-track authority that he requires to ratify the TPP.
- Up-coming midterm elections in the US and Japan's latecomer participation have further complicated TPP discussions in Congress.
- To ratify the TPP, President Obama needs to urgently demonstrate stronger leadership in support of the trade agreement.

- The TPP is seen by many to be crucial to the US economic presence in Southeast Asia, and a failure to ratify the TPP in a timely manner will adversely affect US-Southeast Asia relations.

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INTRODUCTION

Doubts are growing about President Obama's chances to ratify the Trans-Pacific Partnership (TPP) before the end of his Presidency in 2016. An integral component of the Obama administration's "pivot" to Asia, the Trans-Pacific Partnership (TPP) promises to be a ground-breaking regional free-trade agreement for enhancing trading ties between Asia and the Americas. The 12 countries participating in negotiations—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam—represent more than 40% of global GDP and a third of global trade.¹ If realised, the TPP will be the first of its kind, a comprehensive "twenty-first century, high quality" agreement spanning across industries and trade-related activities, potentially providing global income benefits of an estimated US\$ 223 billion per year by 2025 while generating an additional US\$305 billion in world exports per year.²

The benefits of the TPP for the United States are twofold. First, it will boost the country's economy. According to a study funded by the Peterson Institute for International Economics, the TPP will potentially generate an additional US\$123.5 billion in US exports per year³ (Total US exports in FY2013: US\$ 2.3 trillion)⁴. It will also provide greater access to Asian markets while increasing transparency and contributing to a

¹"The President's Trade Policy Agenda" *Office of the United States Trade Representative*, 3 March 2014. <http://www.ustr.gov/sites/default/files/Chapter%20I%20The%20Presidents%20Trade%20Policy%20Agenda.pdf>

² <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/December/TPP-Economic-Benefits>.

³ <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/January/Small-Business-AUSTR-testimony-Small-Business-Subcommittee-Ag-Energy-Tra>

⁴ "US Exports Reach \$2.3 trillion in 2013, Set New Record for Fourth Straight Year" *United States Department of Commerce*, 6 February 2014. <http://www.commerce.gov/news/press-releases/2014/02/06/us-exports-reach-23-trillion-2013-set-new-record-fourth-straight-year>

better regulatory environment in the region.⁵ Second, the TPP is vital to US policy in Southeast Asia and the Asia Pacific region as a whole. It will allow the United States to remain a competitive commercial power in the booming Southeast Asian region, which currently considers China its main trading partner. Southeast Asia's GDP is predicted to double in the next decade, growing from US\$2 trillion in 2012 to US\$ 4.7 trillion by 2020.⁶ At present, the United States has only two trade agreements in East Asia (and only one in Southeast Asia), while the number of trade accords between Asian countries has been growing from three in 2000 to more than 50 in 2011.⁷ The TPP has the potential to act as a balance to regional trade pacts like the ASEAN+1 free trade agreements and the Regional Comprehensive Economic Partnership (RCEP) which exclude the United States, and enhance the economic dimension of the US presence in Southeast Asia.

Yet, domestic barriers to the ratification of the TPP in the United States remain high, raising doubts among policymakers in Southeast Asia and beyond about President Obama's ability to pass the TPP before the end of his administration.

⁵ <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/January/Small-Business-AUSTR-testimony-Small-Business-Subcommittee-Ag-Energy-Tra>

⁶ Paul Soh, "Asean economies set to double GDP by 2020 says IHS" *South China Morning Post*, 3 May 2013. <http://www.scmp.com/business/economy/article/1228657/asean-economies-set-double-gdp-2020-says-ihs>

⁷ "The Trans-Pacific Partnership: Opportunities and Challenges" 113th Cong. 8(2013) Statement of David Hirschmann, Senior Vice President U.S Chamber of Commerce. <http://www.finance.senate.gov/hearings/hearing/?id=03508528-5056-a032-526a-67ec511d1ced>

THE MISSING TPA

Despite its potential economic and strategic benefits, President Obama has found it difficult to galvanize domestic support for the TPP, especially in gaining passage of the “fast-track” trade promotion authority (TPA), a condition that is critical for the ratification of the TPP. Through the TPA, Congress gives the President temporary but exclusive authority to negotiate international trade agreements with a guarantee of an up-or-down vote without amendment. The TPA defines negotiating objectives and establishes consultation and notification requirements for the President to follow throughout the negotiation period. While the TPA is not a necessary step towards TPP ratification, it eases the passage of trade agreements through Congress and strengthens the country’s negotiating hand as trading partners will only take the White House seriously if it has congressional support. In the past 12 years, the United States has signed more than 10 free trade agreements under the TPA. Major free trade agreements passed with the TPA include the North American Free Trade Agreement (NAFTA) and the United States – Korea Free Trade Agreement (KORUS FTA). For the TPA to pass, it would have to be upgraded to reflect new standards in labour, environment, innovation, access to medication, digital trade and the role of state-owned enterprises.⁸ Republican Senator Orin Hatch, a ranking member of the US Senate Committee on Finance has said that “History tells us very clearly that without TPA, your trade agenda will almost certainly fail.”⁹

⁸ <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/USTR-Froman-Testimony-on-the-2014-Trade-Agenda>

⁹ “Senators voice concerns over prospects of trade talks” *ChinaDaily*, 2 May 2014. http://www.chinadaily.com.cn/world/2014-05/02/content_17479372.htm

The Democrats

At the moment, the TPA remains beyond President Obama's reach. In November 2013, 151 Democrats in Congress wrote a letter to President Obama opposing the TPA on the grounds that it was outdated and that it usurped Congress' authority over trade matters. Democrats have traditionally been suspicious of free-trade agreements that can cost American jobs and cause disquiet in their core labour constituency. In the case of the TPP, even Democrats loyal to the Obama administration have been alienated by the secret nature of the negotiations. Leaked draft texts of the legislation have stoked Democrat concerns that the agreement does not provide high enough standards for environmental protection or contain strong enough rules on currency manipulation. In a recent meeting with core Democrat supporters, US Trade Representative (USTR) Michael Froman tried to raise support for the TPP but met with criticism and frustration over the lack of transparency in the negotiations and by the belief that the agreement does not live up to its "sales pitch".¹⁰

Democrats are also unlikely to vote for the TPA ahead of the upcoming mid-term elections in November, wary of agitating the labour unions that are their core constituency. In September 2014, more than 500 environmental groups and labour unions called on Congress to deny President Obama fast-track authority, arguing that a major overhaul of the TPA system was needed.¹¹

¹⁰ Ryan Grim and Zach Carter, "Here's Why Obama Can't Get Democrats to Back His Trade Deal." *Huffington Post*, 20 February 2014. http://www.huffingtonpost.com/2014/02/20/michael-froman-democrats_n_4820363.html

¹¹http://action.sierraclub.org/site/DocServer/Wyden_Fast_Track_Letter_Final.pdf?docID=16401

Anti-globalization movements and a broader decline in the popularity of pro-trade policies in recent years have also adversely affected Democratic attitudes. From 1988 to 2002, Democratic support for TPA in the House dropped from 95 percent to 12 percent, and from 93 percent to 40 percent in the Senate.¹² Administration officials, however, seem confident that they can pass the TPA either after the midterm elections or after a new Congress is seated. In an ironic twist to President Obama's relationship with Congress, if as predicted, the Republicans win the Senate by a slight majority,¹³ a trade-friendly Republican Senate and House can provide a much needed boost to the TPP. Even so, President Obama cannot be assured of Republican support for his trade agenda.

The Republicans

In the meantime, Republicans have threatened to withhold support for the TPP unless TPA is first enacted. In a letter to USTR Michael Froman from July 2014, Republican congressmen stated that while they were strong supporters of the TPP, they were surprised that the President had set the ambitious goal of concluding the TPP negotiations before November 2014, without mentioning how he would first enact the TPA.¹⁴ Usually supportive of free trade expansion, Republicans have nevertheless only provided lukewarm support to the TPP so far. Like the Democrats, they have called for greater transparency in the negotiation process and for stronger consultation with Congress.

¹² Cale Rogoyski and Katelyn Lamson, "Renewing Trade Promotion Authority – Why Now?" *The Atlantic Council*, 31 March 2014. <http://www.atlanticcouncil.org/blogs/ttipaction/renewing-trade-promotion-authority-why-now>

¹³ "Why the Democrats will probably lose" *The Economist*, 1 September 2014. <http://www.economist.com/blogs/democracyinamerica/2014/09/senate-midterms>

¹⁴ http://waysandmeans.house.gov/uploadedfiles/tpp_tpa_letter_final.pdf

Members of the Tea Party caucus particularly object to the TPP, arguing that trade agreements are being concluded at the expense of American products. In an unlikely alliance, Tea Party members have teamed up with labour union leaders to fight President Obama's trade agenda—or what they refer to as “Obamatrade”. Republican support for the TPP has also been affected by President Obama's history of fraught relations with Republican leaders. House Speaker John Boehner has even accused the President of wanting to “annihilate” the Republican Party in one of many partisan showdowns ranging from the Federal Government shutdown to Obamacare.¹⁵ In the case of the TPP, both John Boehner and Senate Minority leader Mitch McConnell have criticized President Obama for doing too little to rally Democratic support for the TPA.

The President

Difficulties in obtaining the TPA can also be attributed to a lack of leadership from the White House itself and to its slow attempts to arouse support for the TPP. The Obama administration did not initially make TPA a priority, leaving it to leaders in Congress to shape the TPA bill without much executive input. Congressional leaders have criticized the Obama administration for its lack of interest in and commitment to achieving the TPA.¹⁶ Efforts to pursue the TPA eventually culminated in the Bipartisan Congressional Trade Priorities Act of 2014, which was sponsored by then-Senate Finance Committee Chairman Max Baucus, Ranking Member Orrin Hatch and House Ways and Means Committee Chairman Dave Camp.

¹⁵“President's Relationship with GOP congressional leaders at new low”, *The Hill*, 30 April 2013. <http://thehill.com/homenews/administration/296847-obamas-relationship-with-gop-congressional-leaders-hits-new-low>

¹⁶ “The Trans-Pacific Partnership: Opportunities and Challenges” 113th Cong. 4(2013) Opening Statement of Senator Orrin G. Hatch. <http://www.finance.senate.gov/hearings/hearing/?id=03508528-5056-a032-526a-67ec511d1ced>

On his end, far from vociferously pursuing the TPA bill, President Obama only made a vague reference to it in his State of the Union address in January 2014, stating that “We need to work together on tools like the bipartisan trade promotion authority to protect our workers, protect our environment, and open new markets to new goods stamped “Made in the USA.”¹⁷ Less than 24 hours later, Senate Majority Leader Harry Reid effectively shut down the passage of the TPA bill by declaring that he was “against” the TPA and stating that “Everyone would be well-advised not to push this right now.”¹⁸ He was later joined by House Minority leader, Nancy Pelosi, in his opposition to the TPA. Without the support of the most powerful Democrats in the Senate and the House, President Obama’s chances of obtaining the TPA within the next few months are slim indeed.

To be fair, it has historically been challenging for US Presidents to obtain the TPA. Congress refused for example to renew the TPA for President Clinton in 1995, 1997 and 1998. President George W. Bush had to pursue the TPA vigorously before he was granted fast-track authority in 2002. Even then, the legislation only passed by two votes despite a Republican majority in Congress. Congress later rebuffed his attempts to obtain the TPA in 2007 and 2008. President Obama, on the other hand, has never accorded international trade the same priority as his predecessors. As international trade experts have noted, he has not only gone longer without the TPA than any other President since the legislation was first implemented in 1974, he has also entered into large-scale, multilateral negotiations without any real personal involvement in pursuing the TPA,

¹⁷ <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>

¹⁸ Alexander Bolton and Vicki Needham. “Reid shunts TPA onto slow track.” *The Hill*, 29 January 2014. <http://thehill.com/homenews/senate/196853-reid-rejects-obamas-plea-for-trade-power>

perhaps believing that he does not need the TPA after all.¹⁹

President Obama's attitude toward the TPA speaks volumes about his leadership style, which as a recent *New York Times* article illustrates, is seen as too distant from Capitol Hill and even from his own party. As Senator Claire McCaskill has stated, "For him [Obama], eating his spinach is schmoozing with elected officials...This is not something that he loves."²⁰ If President Obama is unable to convince loyal supporters in his own party of the TPA's importance, it is doubtful that he will be able to convince even trade-friendly Republicans to grant him fast-track authority. Congressman Dave Camp has observed that a TPA bill will not successfully pass unless President Obama is actively and personally engaged in obtaining the bill. It is possible that Congress will vote to give President Obama the TPA in the post- midterm election 'lame-duck' session, which is often when Congress addresses difficult political issues. Even so, passage of the TPA will still require strong leadership from the White House. If President Obama continues to remain distant from Capitol Hill, and if he continues to be absent from the TPA process, it is unlikely that he will be awarded the fast-track authority that he needs not only to conclude and implement the TPP but also to win the best terms in the negotiations for the United States.

¹⁹ Elliot J. Feldman, "TTP, TTIP and Congress: The Elephant in the Room" *Association of Corporate Council*, 5 August 2013. <http://www.lexology.com/library/detail.aspx?g=8e28a110-e1e4-4302-8fbb-6876d2ade774>

²⁰ Carl Hulse, Jeremy W. Peters and Michael D. Shear, "Obama is seen as frustrating his own party" *The New York Times*, 18 August 2014. http://mobile.nytimes.com/2014/08/19/us/aloof-obama-is-frustrating-his-own-party.html?_r=1&referrer=

THE JAPAN PROBLEM

As the third largest economy in the world (2013: Nominal GDP of US\$4.9 trillion)²¹, and a major Asian power, Japan's latecomer decision in July 2013 to join the TPP was widely seen as a major boost for the trade pact. Yet, the lack of a bilateral US-Japan free trade agreement, and the long and often acrimonious politics of US-Japan trade relations that explain the lack of a deal, further complicate TPP considerations in Congress and undermine the chances of quick positive action. Japan's participation has not only increased the TPP's strategic and economic importance for the United States, it has paradoxically also delayed the conclusion of the negotiations as the two countries have embarked on separate bilateral negotiations to resolve outstanding trade-related issues. Both the US and Japan have acknowledged that long-standing "bilateral sensitivities" over market access to agricultural, auto and insurance products have complicated the US-Japan trading relationship over the past two decades.²² So far, the U.S.-Japan bilateral negotiations have stalled over Japan's extensive system of tariffs on farm products including rice, beef, pork, dairy, wheat and sugar goods; and over both countries' intransigence in protecting their auto industries as far as possible.

²¹ <http://data.worldbank.org/country/japan>

²² <http://www.whitehouse.gov/the-press-office/2013/02/22/joint-statement-united-states-and-japan>

Table 1: US Trading Relationship with East Asian TPP countries

Country	Total Goods & Services Trade (US\$'bn)	Exports (US\$'bn)	Imports (US\$'bn)
Japan	290	116	173
Singapore	68	43	25
Australia	65	48	16
Malaysia	42	15	27
Vietnam	29.7	5.0	24.6
New Zealand	10	5.2	5.3
Brunei	0.576	0.559	0.017

*Latest Data available from 2012 except for Brunei, which is from 2013

Source: Office of the United States Trade Representative

Domestic actors in both countries have also played a major role in hampering the negotiation process. Japanese Vice Minister of the Cabinet Yasutoshi Nishimura has emphasized that Japan will never accept conditions that would “destroy the foundation of agriculture” in the country.²³ Indeed, Diet members have threatened to block TPP if all farm-related tariffs are removed. The powerful Japanese agricultural lobby has also organized demonstrations against the TPP, objecting to any elimination of tariffs on farm products, which include 58 tariff sub-categories just for rice and rice-products. Some Japanese rice farmers have even lobbied the US Congress against the TPP. However, despite pressure from vested interests, Prime Minister Shinzo Abe has been eager to press forward with the TPP talks, using the negotiations as a base to enact broad agricultural reforms domestically.

²³ Yasutoshi Nishimura, “Where is Next for Japan’s Economic Revitalization?” (Panel Discussion, The Carnegie Endowment for International Peace, Washington DC, 1 May 2014)

In the United States, domestic leaders have lobbied the Obama administration to push the Japanese to completely remove their agricultural tariffs and open their markets to more US autos exports. In July 2014, 140 members of the US Congress, including 107 Republicans, sent a letter to the President arguing that the Japanese market access offer limited US farmers' access to it. They urged the President to exclude Japan from the TPP negotiations unless they agree to be held to high standards.²⁴ The latest round of bilateral negotiations in Japan in September 2014 have not resulted in any breakthroughs, due to the US retraction of its previous offer to scrap tariffs on automotive parts out of consideration for the US automotive industry, which is a strong political support base for the Democratic party.²⁵ Talks also continue to stall over agricultural issues although the Japanese claim that they have made as flexible a proposal as possible.²⁶

It is increasingly unlikely that the Obama administration will meet its postponed deadline of November 2014 for concluding the TPP negotiations. Interestingly, the Japanese have expressed concern about President Obama's commitment to the negotiations and to free trade in general. The Japanese Minister of Economy, Akira Amari, has stated: "It is up to the resolve of the US government. If the President comes to the negotiating table with a strong enough determination to wrap it up by spring, other countries will follow suit."²⁷

²⁴ <http://democrats.waysandmeans.house.gov/press-release/members-raise-concerns-over-agriculture-market-access-tpp>

²⁵ "US Keeps Auto Parts Tariff on TPP" *Market Pulse*, 26 September 2014. <http://www.marketpulse.com/20140926/us-keeps-auto-parts-tariff-tpp/>

²⁶ "Japan, US fail to clinch bilateral TPP deal" *Nikkei Asian Review*, 25 September 2014. <http://asia.nikkei.com/Politics-Economy/International-Relations/Japan-US-fail-to-clinch-bilateral-TPP-deal>

²⁷ William Mauldin and Siobhan Hughes, "Reid Deals Body Blow to Obama on Trade" *The Wall Street Journal*, 29 January 2014. <http://online.wsj.com/news/articles/SB10001424052702303743604579350963039911616>

With the United States and Japan unable to reach any understanding, other parties involved in the TPP negotiations are losing the incentive to make any offers or agreements. In the meantime, economists are pessimistic that the talks will reach any conclusion in the next three years²⁸, by which time President Obama would have left office. President Obama has pointed out that both he and Prime Minister Abe have to deal with their own internal politics first, but he has yet to show effective leadership in invigorating domestic support for the TPP.

IMPLICATIONS FOR SOUTHEAST ASIA

Ratification of the TPP will have major implications for US policy in Southeast Asia. Four out of the five negotiating Asian countries are from Southeast Asia, reflecting the TPP's significance for the region. Growing concern over Chinese assertiveness in the South China Sea, as well as China's pervasive political and economic influence in the region have made Southeast Asian countries particularly receptive to the US 'pivot' to Asia. While Washington is considered a key guarantor of regional security and stability, its economic importance in the region is perceived to be declining as China's grows.²⁹ A ratified TPP should anchor the United States in the regional security and economic architecture for decades to come.

²⁸ Sunny Freeman, "TPP Talks Dead in the Water, BMO's Doug Porter Says" *The Huffington Post*, 23 September 2014. http://www.huffingtonpost.ca/2014/09/23/tpp-talks-stalled-doug-porter_n_5869254.html

²⁹ "The State of US - ASEAN Relations" *The East West Center*, 21 November 2013. <http://www.eastwestcenter.org/news-center/east-west-wire/the-state-of-us-asean-relations>

Currently only four out of ten Southeast Asian countries are officially involved in the TPP negotiations. However, Indonesia, Thailand and the Philippines have expressed some interest in joining. The United States has also announced the US-ASEAN Enhanced Economic Engagement (E3) Initiative, which is aimed at preparing the non-TPP members of ASEAN to build capacity so that they are eventually in a position to join the TPP. It will be a major blow to US-Southeast Asia relations if the Obama administration is unable to have the TPP ratified. That will send Southeast Asian countries the signal that they cannot rely on a long-term US presence in the region.

Dr Ely Ratner recently pointed out that the TPP is the single most important policy issue currently affecting US power and leadership in Southeast Asia and that the United States cannot cement a long-term role in Southeast Asia through military muscle alone. Congress must therefore treat the TPP as a strategic issue.³⁰ In advocating that the US Congress ratify the TPP, he is joined by concerned leaders in Southeast Asia. At the Singapore Summit in September 2013, Singapore's Prime Minister Lee Hsien Loong stated that US presence in the region is not "...just about battleships and aircraft carriers and aeroplanes. You have to have trade, goods exchanges... interdependence." He added that if the US did not ratify the TPP, it would be "giving the game away" and that he believes that this year is the last real chance for fulfilling the TPP deal before elections in the 2016.³¹

³⁰ Dr Ely Ratner, "China and the Evolving Security Dynamics in East Asia: Security Dynamics in Southeast Asia and Oceania and Implications for the United States," Oral Testimony the US – China Economic and Security Review Commission, Washington DC, 13 March 2014. <http://www.cnas.org/sites/default/files/publicationspdf/ORAL%20Statement%20Ratner%202014%203%2013.pdf>

³¹ Rachel Au-Yong, "Delays in TPP 'could affect US presence in Asia'" *The Straits Times*, 21 September 2014. <http://www.straitstimes.com/the-big-story/asia-report/singapore/story/delays-tpp-could-affect-us-presence-asia-20140921>

CONCLUSION

Held back both by the looming midterm elections and a lack of progress in the US-Japan negotiations, President Obama's chances of ratifying the TPP are dwindling. Experts contend that if the TPP negotiations are not concluded by the beginning of 2015, the Obama administration will not be able to ratify the agreement before the end of its term in 2016. At present, with domestic forces lined up against the TPP, President Obama's best chance of securing the TPA will be after the midterm elections when a lame duck Congress is in session or under the auspices of a trade-friendly Republican Congress. Much rests on the President's own ability to navigate domestic politics as well as to conclude the bilateral negotiations with Japan satisfactorily. If he finds the political dexterity not only to reach across the aisle but to animate support among his own party members within the next few months, then he will enjoy the twin successes of ratifying the TPP and bringing the economic element of the 'pivot' to Asia to fruition before the end of his administration. Given his recent lack of political prowess, however, it is more likely that President Obama will continue to be an unsuccessful advocate of the TPP, leaving its fate to the priorities of the incoming administration and to further rounds of negotiation, ultimately delivering a major setback to US policy in Southeast Asia.

ISEAS Perspective is
published electronically by
the Institute of Southeast Asian
Studies, Singapore.

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