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TPPA may fall victim to US political dynamics

By Martin Khor

The Trans Pacific Partnership Agreement has become a political football in the US Presidential elections and with the public mood so against trade agreements, the TPPA faces the real possibility of being discarded.

No country was more active in pushing for the Trans Pacific Partnership (TPP). In the five years of negotiations, the United States cajoled, persuaded and pressurised its trade partners to take on board its issues and positions.

Finally, when the TPP was signed in February 2016 by 12 countries, it was widely expected that the agreement will come into force within two years, after each country ratifies it.

But now there are growing doubts if the TPP will become a reality. Ironically it may become a victim of US political dynamics as the TPP has become a toxic issue in its Presidential elections.

Opposing the TPPA is at the centre of Republican nominee Donald Trump's campaign. He has declared the TPP would be a disaster, it would encourage US companies to move their production abroad and weaken domestic jobs, and he called for the US to withdraw from the agreement. In his typical extreme style, Trump said at a recent rally that the TPP

“is another disaster, done and pushed by special interests who want to rape our country.”

Bernie Sanders, the Democrat Presidential candidate who ran a surprisingly close contest with Hillary Clinton, championed the anti-TPP cause, saying: “We shouldn't re-negotiate the TPP. We should kill this unfettered FTA which would cost us nearly half a million jobs.”

The Democrats' Presidential nominee Hillary Clinton also came out against the TPPA, a turn-around from her position when as Secretary of State she described it as a gold-standard agreement. To counter accusations and suspicions that she would again switch positions if she becomes President, Clinton stated: “I am against the TPP, and that means before and after the elections.”

Her campaign chairman John Podesta was more explicit. According to a Wall Street Journal report, Podesta said Clinton as president likely wouldn't seek to rework existing trade agreements such as the TPP but instead move to adopt a new model for global deals.

“We need a new approach to trade. We're not about renegotiation. We're not kind of interested in that. We're interested in a new approach,” he said, in words that echoed Sanders' position.

The Presidential candidates may all be responding to popular sentiment that trade agreements have caused the loss of millions of manufacturing jobs, stagnation in wages and contributed to the unfair distribution of benefits in US society, much of which has accrued to the top 1 or 10 per cent of income earners.

An article in *The New York Times* (29 July 2016) began as follows: “Democrats and Republicans agreed on almost nothing at their conventions this month, except this: free trade, just a decade ago the bedrock of the economic agendas of both parties, is now a political pariah.”

Besides the Presidential candidates, two other players will decide the TPPA's fate: President Obama and the US Congress.

Obama has been the TPPA's main champion, passionately arguing that it will bring economic benefits, raise environmental and labour standards and give the US an advantage over China in Asian geo-politics.

Considering the TPP to be a key legacy of his presidency, Obama wants Congress to ratify the agreement before his term ends. But he has been unable to get the bill tabled because it would be certainly defeated in this election season, given the TPP's unpopularity.

His last opportunity is to get the TPP passed during the lame-duck Congress session after the election on 8 November and before mid-January 2017.

However, it is uncertain whether there is enough support to table a lame-duck TPP bill, and if tabled whether it will pass.

Last year, a related fast-track trade authority bill was adopted with only slim majorities. Now, with the concrete TPPA before them, and the swing in mood, some Congress members who voted for fast track are indicating they won't vote for TPP.

For example, Clinton's running mate for Vice President, Senator Tim Kaine, who supported fast track has now proclaimed his opposition to TPP. Other leading Democrats who have publicly denounced TPP include House Minority Leader Nancy Pelosi, and House Ways & Means Committee Ranking Member Sandy Levin who said: "It is now increasingly clear that the TPP agreement will not receive a vote in Congress this year, including in any lame duck session, and if it did, it would fail."

Congress Republican leaders have also voiced their opposition. Senate Majority Leader Mitch McConnell said that the presidential campaign had produced a political climate that made it virtually impossible to pass the TPP in the "lame duck" session.

House Speaker, Republican Paul D. Ryan (R-Wis.) who played a leading role in writing the fast-track bill, said he sees no reason to bring TPP to the floor for a vote in the lame duck session because "we don't have the votes."

Meanwhile, six House Republicans sent a letter to President Obama in early August last week urging him not to try to move TPP in a "Lame Duck".

Though the picture thus looks grim for Obama, he should not be under-estimated. He said when the elections are over he will be able to convince Congress to vote for the TPP.

"I will actually sit down with people on both sides, on the right and on the left," he told the

media. "We'll go through the whole provisions....I'm really confident I can make the case this is good for American workers and the American people." He added many people thought he would fail to obtain the fast track legislation, but he succeeded.

On 12 August, the Obama administration submitted a draft Statement of Administration Action, as required by the fast-track process for introducing a TPP bill. The document describes the steps the administration will take to implement changes to U.S. law required by the TPP. Obama can later send a final statement and the draft of the implementing bill describing the actual changes to US law needed to comply with the TPP agreement.

Following that, a lot of deal-making is expected between the President and Congress members. Obama will doubtless offer incentives or privileges to some of the demanding Congress members in order to obtain their votes, as was seen in the fast-track process.

To win over Congress, Obama will have to respond to those on the right and left who are upset on specific issues. The President is teaming up with the Republican Congress leaders, who however want him to fix some issues. They are upset about the term of five years (instead of 8 or 12 years) for data exclusivity for companies owning biologic drugs, and the exclusion of tobacco companies from the use of ISDS (investor-state dispute settlement) in the TPP.

To pacify them, Obama will have to convince them that what they want will anyway be achieved, even if these are not legally part of the TPP because the TPP text cannot be amended.

He can try to achieve this through bilateral side agreements on specific issues. Or he can insist that some countries take on extra obligations beyond what is required by the TPP as a condition for obtaining a US certification that they have fulfilled their TPP obligations. This certification is required for the US to provide the TPP's benefits to its partners, and the US has previously made use of this process to get countries to take on additional obligations, which can then be shown to Congress members that their objectives have been met.

Obama could theoretically also re-negotiate to amend specific clauses of the TPP in order to appease Congress. But this option will be unacceptable to the other TPP countries.

In June, Malaysia rejected any notion of renegotiating the TPPA. The question of

renegotiating the TPPA does not arise even if there are such indications by US presidential candidates, said Tan Sri Dr Rebecca Fatima Sta Maria, then the secretary general of the International Trade and Industry Ministry.

“If the US does not ratify the TPPA then it will not be implemented,” she said. The other TPP members would have to resort to a “different form of cooperation.”

Singapore’s Prime Minister Lee Hsien Loong, on a visit in August to Washington, dismissed any possibility of reopening parts of the TPP as some Congress members are seeking. “Nobody wants to reopen negotiations,” he said. “We have no prospect of doing better and every chance of having it fall apart.”

In January, Canadian Trade Minister Chrystia Freeland said a renegotiation of the TPP is not possible. Japan also rejected renegotiations, which it defined as including changing existing side agreements or adding new ones. This is not going to happen, said Japan's Deputy Chief of Mission Atsuyuki Oike.

What happens if the US Congress does not adopt the TPP during the lame-duck period? The 12 countries that signed the agreement in February are given 2 years to ratify it.

Enough countries to account for 85% of the combined GNP of the 12 countries must ratify it for the TPP to come into force. As the US accounts for over 15% of the combined GNP, a prolonged non-ratification by it would effectively kill the TPPA.

Theoretically, if the TPP is not ratified this year, a new US President can try to get Congress to adopt it in the next year. But now it looks like the chances for this happening are very slim.

That’s why the TPP must be passed during the lame duck session. If it fails to do so, it would mark the dramatic change in public opinion on the benefits of free trade agreements in the United States, the land that pioneered the modern comprehensive free trade agreements.

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