AMERICAN THINKER: WHAT'S ACTUALLY IN THE TRANS PACIFIC PARTNERSHIP?

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On November 5, the White House released the text of the 5,544 page Trans Pacific Partnership (TPP) that President Obama had just finished negotiating under the FastTrack authority that Congress gave him. That trade pact can no longer be amended. The up-or-down votes in the House and Senate will take place as early as January 2016.

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So what’s in the TPP? Here’s a quick summary:

1. A legislative body superior to Congress
2. A vehicle to pass Obama’s climate change treaty
3. Increased legal immigration
4. Reduced patent protection for U.S. pharmaceuticals
5. Quotas on U.S. agricultural exports
6. Increased currency manipulation
7. Reduced U.S. power

That’s the summary. Here are the details.

1. A Legislative Body Superior to Congress

It turns out that Senator Jeff Sessions was correct when he said that the treaty creates a new legislative body called the “Commission,” a term meant to invoke the European Commission, known for its recent decision to require that all the countries of the European Union take in Moslem refugees from the Middle East.

This is not a limited government. This is a government that can decide almost everything. Here is the relevant passage from Article 27 of the treaty itself:

The Parties hereby establish a Trans-Pacific Partnership Commission (Commission) which shall meet at the level of Ministers or senior officials, as mutually determined by the Parties. Each Party shall be responsible for the composition of its delegation…. The Commission shall:…. (c) consider any proposal to amend or modify this Agreement;… (h) take such other action as the Parties may agree….

The first session of the Commission has been scheduled to occur within one year of the date the treaty goes into effect, which will likely be before President Obama leaves office. At that meeting, Obama could change the agreement in any way that he wishes to, so long as he has the approval of the other 11 countries. He would not need Congress’s approval to change the deal.

The good news is that all of the countries of the deal would have to approve unanimously whatever legislation is passed by the Commission. The bad news is that those countries can change that rule at any meeting so that their future votes would not have to be unanimous.

The Commission would not be particularly powerful if its decisions could be ignored. However, the “Arbitration Tribunals” in the pact will have the power to award multi-billion dollar judgments against any member government that violates its decisions.

2. A Vehicle to Pass Obama’s Climate Change Treaty

In early December, world leaders, led by Obama, will meet to negotiate the final terms of a climate treaty, designed to reduce carbon emissions. We already know from a White House press release that the terms will be completely unfair to the United States. Obama will commit the United States to a huge reduction in carbon emissions of 26% -28% from 2005 levels, but will let China, already a much larger carbon emitter, continue to expand its carbon emissions until 2030.

We also know, that the climate treaty will set up its own governing body, its own court system, and its own tax collecting system. The treaty will also include annual reparations to be paid by the developed countries to the undeveloped countries of the world. The amount of the reparations will be negotiated in Paris.
Chapter 20, the environmental chapter of the TPP, already requires compliance with previous multilateral environmental agreements that have been negotiated. So, the terms of the climate treaty will likely be incorporated into the TPP when the Commission first meets after the TPP passes. This is more or less specified in Article 20.4 which states:

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

When President Obama finished negotiating the Iran Nuclear Deal, he went first to the UN Security Council, not to Congress, to get the deal approved. More or less the same thing could happen with the multilateral environmental agreement that Obama negotiates in Paris. It will be incorporated into the TPP, whether Congress agrees with its terms or not.

This wouldn’t matter, except that the “Arbitration Tribunals” in the TPP can impose multi-billion dollar fines upon the U.S. government if the U.S. violates anything that is in the pact. In other words, the tribunals can force whatever Obama negotiates in Paris upon the American people, and Congress will have very little say.

### 3. Increased Legal Immigration

During the debate on FastTrack, Representative Ryan, now House Speaker, claimed that the TPP would not affect U.S. immigration law. However, there are two chapters of the treaty that, taken together, open U.S. borders to increased legal immigration.

Chapter 10 calls for the opening of U.S. borders to foreign service companies that want to bring foreign workers with them to provide services in the U.S., while Chapter 12 calls for the opening of U.S. borders to the foreign professionals that they bring in. Rosemary Jenks, the Director of Government Relations for Numbers USA explains:

Chapter 10 is a massive impact on our economy through immigration because it means that not only foreign companies will be coming to the United States to compete with American companies, but those foreign companies can send in their foreign employees – they don’t have to hire Americans. They don’t have to pay American wages. They are sending their own employees to the United States to provide a service and compete with American workers and American companies that are already providing that service, so you’re going to displace American workers from jobs and you’re going to undercut wages by increasing the supply of services.

Here are some of the relevant parts of the treaty. These parts in Chapter 10 mean that the U.S. can’t restrict the number of foreign service companies nor the number of people that they can employ (and therefore the number of people that they bring into the country):
Article 10.5: Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on: (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;… (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;…

Chapter 12, “Temporary entry for business persons,” provides that visas must be supplied to the professionals being brought into the country by these service companies and that they must be allowed to bring their spouse and children with them.

But under the appendices to Chapter 12, almost all of the other countries participating in the TPP limit immigration to certain professions and limit the length of stay of these “temporary” workers. For example, Japan limits entry to businessmen, specific professions and to technicians who have the equivalent of a Japanese associates degree. It also limits the amount of time that they can stay in the country to five years. No such appendix appears for the United States.

These provisions could lead to a massive flow of immigrants who had been hired abroad by foreign companies to provide services within the United States. Germany’s experience with “temporary” workers from Turkey demonstrates that once they arrive in a developed country from a poor country, they find a way to stay. Under some interpretations of U.S. law, if they have a baby while they are in the United States, that baby is awarded automatic U.S. citizenship.

If Congress were to try to slow the massive immigration flow that could stem from these provisions, it could be sued by the foreign service providing companies under the arbitration procedures of the TPP. Under the threat of billions of dollars of damage assessments, Congress would be forced to withdraw such limitations.

Representative Ryan was correct. The TPP does not change U.S. immigration law. It just produces an increased flow of legal immigrants and prevents Congress from doing anything about it.

4. Reduced Patent Protection for U.S. Pharmaceuticals

In the United States, the length of a patent monopoly is currently 20 years from the date of filing for the patent. Since it takes about 3 years to get approval for a patent, this gives a patent holder approximately 17 years to profit from a patent. During those 17 years, the patent holder has to earn enough money from the monopoly to justify the research and development costs. After those years, any competitor can sell a generic brand of the product.

This treaty reduces patent protection for pharmaceuticals to 5 years and protection for biologics to 8 years. These reductions would greatly reduce the incentive to develop new pharmaceuticals.
Note 53 of Chapter 18 (Intellectual Property) summarizes the terms of protection awarded to these patents by the treaty:

For greater certainty, a Party may limit the period of protection [for pharmaceuticals] to five years, and the period of protection under Article 18.52.1(a) (Biologics) to eight years.

A few weeks before Chapter 18 was leaked to Wikileaks, the stock prices for companies in the U.S. pharmaceutical and biotech industries fell 10% in stock value, probably due to insider trading by people who knew the then-secret treaty’s terms. But it is not just falling stock prices that should concern the American people. The pharmaceuticals industry generates exports and growth to the American economy. Also, many people will be condemned to premature deaths because the drugs that would have saved them would no longer be profitable to develop.

5. Quotas on U.S. Agricultural Exports

Almost all of the U.S. senators from agricultural states voted to FastTrack Obamatrade. Why? They were told that the treaty would reduce tariffs on U.S. agricultural products. The big prize was Japan, a wealthy country which currently keeps out American agricultural products through high tariffs.

But as soon as the Trans Pacific Partnership had been negotiated, Japan’s Minister of Agriculture, Forestry and Fishery reassured Japanese farmers that there will be little impact upon their sales and prices. A reading of the treaty makes it clear why.

First, the treaty includes statements that foreigners won’t be able to sell many products to the Japanese people; they will have to sell them to the Japanese government. The following quote appears in the section regarding the treaty’s rice quota:

Imported by Japanese Government according to Article 30 of "The Law for Stabilization of Supply-Demand and Price of Staple Food", imported to be purchased and sold by Japanese Government in response to a joint application by seller to and purchaser from Japanese Government according to Article 31 of the Law, imported with certification of Minister of Agriculture, Forestry and Fishery according to the cabinet order concerning rice and others provided by the cabinet order provided in column 3 of paragraph 1 of Article 34 of the law out of quote (-142) TRA[CSQ-1]

Second, the amount of almost every agricultural product that can be exported without paying Japan’s high tariffs is controlled by strict quotas. In fact Japan has 33 different TPP-Wide Tariff Rate Quotas (called TWQs in the treaty) these cover almost every conceivable agricultural product. Statements like the following appear as a note for these products:

TWQ-33 shall be administered by Japan through a first-come, first-served import licensing procedure pursuant to which a certificate of tariff rate quota shall be issued by Japan.

Third, the crowning achievements of Obama’s negotiators were the CSQs (Country Specific Quotas) that apply to American products only. This means that a certain amount of these products (including rice, cake mixes, wheat, processed cheese, whey, glucose, corn starch, and malt) can be exported to Japan at a very low tariff rate. Those companies who obtain these
import certificates will be able to buy in the U.S. at the world price and then sell in Japan at the Japanese price. They will make killer profits.

This is not a free market treaty. It is the stand-in-line system for distributing goods used by the anti-free-market governments of the old Soviet Union and modern day Cuba, Venezuela, and North Korea. American companies that wish to sell to Japan and make these huge profits will have to be the first to stand-in-line to buy the certificates.

The small co-ops that share their profits with their farmer owners won’t get very many of these certificates. Only the big agribusinesses will have the resources and knowledge needed to game the system. They are the ones that can afford to pay the necessary political contributions. They are the ones that can afford to hire locals whose only job will be to stand in lines.

If the U.S. goal were to sell U.S. agricultural products abroad, it could simply require balanced trade with trade surplus countries like Japan. Then Japan would rush to take down its barriers to U.S. products, because the U.S. would be placing scaled tariffs, proportional to its trade deficits with Japan, upon Japanese products.

But this treaty is not designed to open markets to free trade. It is designed to give big American agricultural companies big profits in return for big campaign contributions. This is the crony capitalist deal of trade deals. Governments decide who gets the profits, and only the biggest companies will be able to pay to play.

6. Increased Currency Manipulation

At Japan’s insistence, the TPP failed to address currency manipulation, the chief strategy used by trade cheaters to give domestic exporters hidden subsidies and to put hidden tariffs upon imports. Instead of including currency manipulation in the TPP, the countries involved issued a separate Declaration called the “Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries” in which they claimed to be against currency manipulation.

In that Declaration, each country promised to report to the Group whenever its central bank was buying foreign bonds and stocks. But the currency manipulators knew that many of the ways their governments manipulate exchange rates were completely left out of the reporting requirements.

Take Japan for example. President Abe swept into office with the promise to resume Japan’s currency manipulations. Ambrose Evans-Pritchard wrote on January 1, 2013:

Japan’s new premier Shinzo Abe is sweeping into office like Roosevelt in 1933, commanding the central bank to do whatever it takes to defeat deflation, deliver 3pc NGDP growth, and drive the dollar-yen rate [down] to 90.

Turns out that Japan didn’t stop at 90. It took the yen’s exchange rate all the way down to 82. Back then (January 1, 2013), a yen cost 1.15¢. Now it costs 0.82¢. As a result, Japanese production costs have gone down by about 29%, as compared to American production costs. Meanwhile, the U.S. merchandise trade deficit with Japan took off from $60 billion in 2010 to $68 billion for the 12 months ending in September 2015.
And expect the U.S. trade deficit with Japan to worsen in the near future, with or without the TPP. Japanese producers have been plowing their currency-manipulation produced profits into R&D and robots. Eventually, Japanese companies will be able to put Ford and GM on the ropes. According to Donald Trump, they already have Caterpillar losing market share.

So how did Abe bring his exchange rate down to 82? Believe it or not, the U.S. Treasury Department can’t figure it out! In its October 15 semiannual report to Congress on International Economic and Exchange Rate Policies, the U.S. Treasury Department looked solely at the lack of purchases of foreign currencies reported by Japan’s central bank and concluded that Japan wasn’t manipulating its exchange rate at all! The report stated:

Japan maintains a floating exchange rate regime and has not intervened in foreign exchange markets since November 2011. Along with other G-7 countries, Japan committed to direct its economic policies to domestic objectives using domestic instruments, and has committed, with other G-20 countries, to refrain from competitive devaluations, and resist all forms of protectionism. (p. 20)

But currency manipulating governments don’t just use their central banks to buy foreign currencies! They also use their state-owned banks, their state-owned businesses, their post-office savings funds, their government pension systems, and their influence over private businesses. They get these organizations to purchase dollars, driving up the exchange rate of the dollar and driving down the exchange rate of their currency. Then they get them to lend those dollars to the United States by buying U.S. bonds and stocks. Japan, for example, has its government pension funds purchase dollars and use those dollars to purchase U.S. bonds and stocks.

Yet, this Declaration doesn’t even ask governments to disclose the purchases of foreign stocks and bonds by any government entities, except for the central banks. U.S. Treasury Secretary Jacob J. Lew was one of the Group that issued this declaration. Isn’t there anybody in the U.S. Treasury Department who understands how currency manipulation works?

Moreover, the Declaration just says that governments that engage in currency manipulations should not do it. There are no penalties, whatsoever. In fact the Group can’t even complain about a country’s currency manipulations unless such a conclusion reflects “the collective views of the Group.” That means that any decision to condemn must be agreed to by the country being condemned!

All of this is simply unenforceable window dressing that ignores the fact that Malaysia, Vietnam, Mexico and Japan (four of the countries in the agreement) are already active currency manipulators, giving them huge trade surpluses with the United States. For the 12 months ending in September 2015, they had merchandise trade surpluses with the U.S. of $21 billion (Malaysia), $30 billion (Vietnam), $57 billion (Mexico) and $68 billion (Japan).

American businesses that build factories abroad for import into the U.S. love currency manipulation. Nike, for example, has a huge factory in Vietnam, but not a single factory in the United States. Vietnam’s currency manipulations keep Nike’s business costs low, allowing Nike to gain market share when competing with American producer New Balance.

7. Reduced U.S. Power
Some proponents of the TPP claim that the pact will counter Chinese power in the Asia-Pacific region. A variant of that argument was made in a letter signed by several former defense secretaries:

There would be harmful strategic consequences if we fail to secure these agreements. In both Asia-Pacific and Atlantic, our allies and partners would question our commitments, doubt our resolve and inevitably look to other partners.

If this argument were correct, it would be compelling. However, in an interview with a Russian TV station on November 2, Secretary of State John Kerry invited China and Russia to join the TPP. He said:

We invite people to come join … the Trans-Pacific Partnership, the TPP. We welcome China, we welcome Russia, we welcome other countries who would like to join, as long as they want to raise the standards and live up to the highest standards of protecting people and doing business openly and transparently and accountably.

Moreover, as Clyde Prestowitz has pointed out, China has already concluded free trade agreements with many countries, including several TPP partners. If the U.S. truly wanted to counter China, it could end China’s enormous trade surplus with the United States by requiring balanced trade through a scaled tariff or a similar mechanism. China uses the enormous foreign exchange reserves it acquires from its grossly imbalanced trade with the U.S. to buy economic and political influence around the world. By tolerating annual bilateral trade deficits of hundreds of billions, the U.S. is underwriting China’s bid for global influence.

Furthermore, if past trade agreements are any guide, the TPP will do worse than nothing when it comes to U.S. power. Past trade agreements have led to sharply increased trade deficits. Long term trade deficits gnaw at the economic sinews of our global power, diminishing U.S. technological capability, manufacturing capacity, innovative potential, financial capability, and military power.

Countries with trade surpluses tend to gain in global power, while countries with trade deficits lose power. Countries that ran long-term trade deficits (e.g. Spain in the 16th century, the Dutch in the 17th century, England after World War I) lost industry, capability, financial strength, and military power. There is no reason to expect that the U.S. will be different. Indeed, our analysis of global power and economic trade implies that if the U.S. were to continue to run trade deficits the size its 2007 deficits, U.S. power could be expected to decline by about 28% over the next 20 years, relative to the rest of the world.

To all of this, some opponents of trade balancing tariffs may be tempted to cry “Smoot Hawley!!!” But they draw the wrong lessons. When the Smoot Hawley tariff was enacted, the U.S. was a currency manipulating trade surplus country. In 1925, the Coolidge administration had added a low exchange rate with gold for the dollar to the already high U.S. tariffs.

The world was then on the gold standard, so changing the exchange rate of the dollar with gold lowered the dollar’s exchange rate with other currencies. Through this low exchange rate, Coolidge increased U.S. exports and reduced U.S. imports. As a result, the U.S. gained market share in its competition with Britain's industries and got Britain's gold.
But in the 1930s, U.S. currency manipulation stopped working because Britain and Germany stopped being willing victims. When America slightly raised its already high tariff schedule through the Smoot Hawley tariff, Britain and Germany started free trade zones with their allies in which they and their trading partners placed high tariffs on American products. As a result, Britain and Germany quickly exited the Great Depression while the U.S. languished in depression until World War II.

The true lesson of Smoot Hawley is that currency manipulating countries can go too far, and cause their victims to finally take action. Meanwhile, trade deficit countries can get out of economic depressions by trading freely among themselves while placing tariffs upon currency manipulating countries’ products.

After World-War II, the U.S. adopted a low tariff system, which worked great until Japan and Germany and then many other countries, mostly in Asia, discovered the power of currency manipulation. Their government-owned banks, especially their central banks, forced loans upon the United States by buying U.S. assets such as U.S. Treasury Bonds, so that the United States dollar would go up in exchange rate and their currencies would go down in exchange rate.

As a result, the currency-manipulating countries, especially China, Japan and Germany rapidly grew in wealth and power while the U.S. lost wealth and power. The TPP could be another nail on America’s coffin by further constraining U.S. action to rebalance trade. However, the TPP does include a good provision.

**The Good Provision in the TPP**

There is an excellent provision in the TPP that the next president should exercise if the House and Senate vote next year to enact the TPP. Under that provision, any country can withdraw from the agreement, simply by giving six months notice. Specifically, Article 30.6 of the TPP reads:

**Article 30.6: Withdrawal**

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the contact points.

2. A withdrawal shall take effect six months after a Party provides written notice to the Depositary under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

If the TPP is enacted, some Americans will benefit, but the effect upon the American economy would be unambiguously bad. There would be soaring electricity prices resulting from the climate treaty. There would be a loss in service sector jobs due to increased immigration. There would be a reduction in the research and development of pharmaceuticals and biologics due to reduced patent protection. There would be a loss of factories due to continuing currency manipulation. And there would be a decline in U.S. power due to continuing trade deficits.

In short, the TPP is not worth the 5,466 pages that it is printed upon. A free trade treaty just with countries that don’t cheat, such as Canada, would be worthwhile. But this trade agreement
includes countries that manipulate exchange rates to give themselves trade surpluses and give the U.S. trade deficits.

The best alternative, simply stated, is a policy of balanced trade. If one country has a trade surplus, another has to have a trade deficit, but every country can have balanced trade. Our invention, the scaled tariff, lets countries balance trade without requiring any trade pact whatsoever.

When balanced, every country benefits from trade. If a country cheats to keep out imports, it would be reducing its own exports. If it cheats to produce more exports, it would be increasing its own imports. No country need be involved in another country’s domestic affairs. No international agreement need replace Congress and end American freedom.