A PRIMER ON THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

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What is the TPP?

The Trans-Pacific Partnership, otherwise known as the TPP is envisioned to be a multilateral Free Trade Agreement (FTA) that would liberalize trade among the economies of Asia-Pacific countries, including the United States. The agreement is currently being negotiated among the following countries: Brunei, Chile, Singapore, New Zealand, United States, Australia, Peru, Vietnam, Malaysia, with Mexico and Canada expected to join negotiations by the end of 2012. The addition of Mexico and Canada could give rise to a free trade area covering 658 million people and US$20.5 trillion in economic activity. ¹

As in any trade agreement, the main objective of the TPP is to provide greater market access through the lowering or elimination of trade barriers. The TPP has been championed by the United States Trade Representative (USTR) as complimenting other US trade agreements that already have been negotiated. What sets the TPP apart from other FTAs is that it aims to free up trade through the lowering and elimination of barriers behind trade borders.² Whereas traditional trade agreements are focused mainly on tariff reduction and elimination, the TPP tackles areas previously not covered in other FTAs - Government Procurement, Services, Investment, Health and Safety Regulations, Intellectual Property, Fair Competition with State-Owned-Enterprises, Supply Chain Management, and Regulatory Due Process.

The TPP has been promoted as a unique and modern "21st century agreement". Because the international trading system and economy have dramatically changed over the years, the TPP will address new and emerging issues that have come about due to various changes, such as the development of the Internet and other new technologies, recognition that the environment and trade should go hand-in-hand, and the rise of the services sector as an important component of trade. However, the new and varied trade issues the TPP is hoping to tackle are also anticipated to be the among the most contentious areas of negotiation.

Discussing issues that are "behind the border" are expected to generate a lot of debate, inevitably delaying the pace of the negotiations, since "behind the border issues" address policies that are managed and formulated domestically. ³ Thus, in order for a negotiating


² Ibid.

country to be able to adhere to an agreed issue, that country must first ensure that it has the proper domestic laws and policies that would allow it to conform to the regulations set forth under the TPP. Without having the corresponding domestic laws in place, it would be hard to imagine how several of the negotiating parties would be able to adhere to the agreed tenets of the TPP.

While the US public remains largely unaware of the TPP negotiations and their status and progress, trade and economic policy analysts have been able to identify areas that are expected to be controversial and slow down the progress of the negotiations. These issues are not only “behind the border”, but some have also never been tackled in previous trade agreements, thus increasing the chances that these negotiations might take more time than expected.

An October 2011 East-West Center “working paper” on economic issues identified a number of difficult areas that are expected to be negotiated extensively including:

1. **Services**: Developed economies would want strict disciplines, while developing economies would want to push for exclusions and slow implementation.

2. **Competition**: Not all participating countries may have explicit competition policies in place.

3. **Investment**: Parties have different views regarding the sectors they would want to be covered and ownership limits. Moreover, some countries want investor-state arbitration as part of the agreements, which other countries oppose.

4. **Labor**: Developed economies seek labor practices that are difficult to adopt and may impede competitiveness in low-income countries.

5. **Environment**: Developed countries will push for higher environmental standards, which developing countries are likely to resist.

6. **E-Commerce**: Issues involving regulation of information flows may be of concern to some economies.

7. **Government Procurement**: Only two PPP negotiating countries have agreed to WTO agreements, while three other parties are considered to be observers. Members will push for strong provisions, with observers expected to back this up, but non-members will most likely seek only for minimal rules.

A summary of the above expected negotiating disagreements show that the developed and developing countries would push for different agendas and interests in the negotiations. On one hand, developed countries would want stringent rules that would reflect and address the new economic developments. On the other side, less developed countries contend that these

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high-standard regulations are a hindrance, which they feel would restrict their economic growth.

**How was the TPP Conceived?**

The stalled WTO Doha Development Round at the multilateral level has pushed countries to look for alternatives and ways to liberalize the global trading system and the economy. In view of this development, there has been a significant rise in the number of trade agreements during the last few years at the multilateral, regional, and bilateral levels.

In 2006, four member countries of the Asia-Pacific Economic Cooperation (APEC), namely: Brunei Darussalam, Chile, New Zealand and Singapore established a Trans-Pacific Economic Partnership or otherwise known as the P4. The P4 was envisioned to be a major step in establishing an inclusive, trans-Pacific trade and investment open market.

The George W. Bush Administration saw the P4 as a pathway for the US to promote trade liberalization in the Asia-Pacific in the absence of “Fast Track” Presidential Trade Authority, which Congress was unwilling to renew after it expired at the beginning of July 2007. President Bush announced on February 2008 that the US would join the P4 talks on the liberalization of trade in financial services, a long standing US objective because of the comparative advantage of US companies. In September 2008, US Trade Representative (USTR) Susan Schwab announced that the US would begin negotiations with the P4, with the first round of negotiations to be held on early 2009.

On November 2008, Australia, Vietnam and Peru announced that they would be joining the trade negotiations. By October 2010, Malaysia followed suit. Last June 2012, it was announced that Mexico and Canada are set to join the negotiations by the end of the year.

The US has played a leading role since joining the TPP negotiations,

**US Foreign Policy and TPP**

The Obama Administration has continued to embrace the initiative begun by President Bush. In fact, participating in the TPP was in line with the new President’s intention to shift the focus of highest level policy attention from the Middle East and the wars in Iraq and Afghanistan towards the economic opportunities and security challenges in the Asia-Pacific region.

The TPP is one of the manifestations of that US “pivot” –or “rebalancing”--to the Asia-Pacific and more importantly a testament to how US policymakers view the region as an increasingly important area where the US must devote more policy resources and make its presence felt. Despite currently slowing growth in most of the region, including China, the Asia-Pacific is still

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the fastest growing region the world and one of the main drivers of the global economy. The region accounts for 60 percent of Global GDP and 50 percent of International Trade. 7

With the Asia-Pacific’s growing economic importance, greater integration with the Asia-Pacific economy—especially on the export side has become imperative. The Obama Administration believes that the TPP provides the most logical path to achieve this goal, especially in the absence of PTA for the US economy to be connected with the growing Asia-Pacific region.

While the TPP, as one of the cornerstones of the US’s greater engagement in Asia, has been overshadowed by its (US) increased military presence and engagement in the region, it must be noted that the increased Asia-Pacific military (US) presence in trying to secure continued peace and address security issues is vital towards ensuring economic stability in the region, and thus a vital component of the US’s trade aspirations in the region.

The US, ASEAN, and the TPP

During the last several years, the member states of ASEAN as a whole have been actively pursuing trade agreements with various economic partners. To date, agreements are in place between ASEAN and the following countries: 1.) Australia – New Zealand 2.) China 3.) 4.) India 5.) Japan 6.) India. At one point, there were also talks between the EU and ASEAN, but the former decided to move another direction and will just pursue negotiating with each ASEAN country, rather than with the ASEAN as whole.

The attractiveness of the ASEAN as a FTA partner is due to several factors, not the least of which is the region’s combination of a population of 590 million people and an economy that in 2010 was worth US$1.7 trillion. 8 Moreover, the ASEAN region has over the years been implementing various measures that would allow all member-countries to be more integrated, both economically and in terms of trade, which consequently would give rise to more opportunities for trading partners.

In view of the increasing integration between the ASEAN and other economic powers, it is notable that the US has not participated nor is in the process of even negotiating a FTA with the ASEAN. The main reason to the US’s reluctance to pursue an FTA with ASEAN is not economic in nature, but rather due to its foreign policy with regard to Myanmar, which is one of the ten ASEAN-member countries. Until the earlier this year, US-Myanmar relations have been historically frosty at best due to Myanmar’s suppression of democratic proponents and its human rights record, resulting in numerous economic sanctions from the US.9

Unable to pursue a regional FTA with ASEAN, the US is using the TPP as its springboard towards integrating not only with ASEAN, but with the whole Asia-Pacific region. However, full integration by the US with ASEAN is not possible under the TPP, as in its present form the TPP only has four ASEAN countries as negotiating parties, namely: 1.) Brunei 2.) Malaysia 3.) Singapore 4.) Vietnam. More importantly, even if states party to the TPP wanted to include all ASEAN countries in the negotiations, this is not possible as one of the requirements of joining the TPP is membership in APEC, which Cambodia, Laos, and Myanmar are not a part of.\(^\text{10}\)

While the window is open for the other ASEAN countries, such as Indonesia, the Philippines, and Thailand to eventually join the TPP negotiations, the major question is whether these countries would want to join the negotiations at all. Indonesia has already indicated that it is not in a hurry to join the negotiations since they are not yet sure if they would benefit or lose out in the agreement.\(^\text{11}\) Thailand is also undecided on whether to join the negotiations, while the Philippines is not yet ready to.

The level of modalities that are being discussed in the TPP negotiations could be a hindrance on how the negotiations proceed. With the US leading these trade talks, it is pushing to include issues, such as high standards in IPR, non-preferential treatment for state-owned enterprises, government procurement, among others, that current negotiating parties and future parties might not agree to.

Among the ASEAN countries that are part of the agreement, it is particularly important to monitor whether or not Vietnam will acquiesce to the proposals put forth by the US. Vietnam, being not on the same level of development as other negotiating parties, might find it hard to comply with the demands that are being discussed in the TPP. Being a developing country, it remains to be seen whether Vietnam has the capabilities to manage, achieve, and enforce the high level ambitions that are being pushed under the TPP. How Vietnam proceeds in the negotiations could be a deciding factor on if and when Indonesia, Philippines, and Thailand would eventually join.

While an agreed upon TPP will not fully integrate the US with the ASEAN economies, it still has the option of pursuing a US-ASEAN FTA in the future. With the US slowly easing up to Myanmar and ties between the two countries now continually improving, this development eliminates a big stumbling block and leaves open the possibility of an eventual FTA between the two countries. Moreover, with some ASEAN countries already a negotiating party of the TPP, a movement towards a full US-ASEAN FTA would be easier as several ASEAN countries would already be familiar with the trade issues the US might want to touch upon. However, until the TPP negotiations conclude (which was originally targeted to conclude by the end of this year but have now been pushed to 2013) the possibility of any movement towards a US-ASEAN FTA is remote.

\(^{10}\) \textit{Ibid.}

Prospective TPP Parties:

Given that the TPP has been envisioned as a means to economically integrate the Asia-Pacific region, it is imperative that the number of negotiating countries increase. Yet, more important than the number of parties is the need to include the most important economies of the Asia-Pacific. Without the participation of the bigger economies of the region, the TPP may fall short of its purpose and may not, in the end, attain its desired objectives.

Japan, South Korea, Taiwan are some of the biggest economies in the region, and none of them have yet joined the negotiations. In 2011, Japan’s Prime Minister Yoshishiko Noda expressed that his country (the 3rd largest economy in the world) would like to participate in the negotiations and begin consultation talks with the TPP countries, which need to approve a country’s application before they can actually join the negotiations. While Japan has had initial talks with Singapore, Malaysia, Australia, New Zealand, and the US, nothing concrete has come out of these consultations.

The slow movement of Japan towards joining the TPP could be traced to domestic opposition about Japan’s possible participation in the TPP. Specifically, there has been a strong resistance from the agriculture sector, which remains a heavily protected sector by the government, with tariffs in some products going as high as 800%. During talks with their Japanese counterparts in February, US officials stated that they would not back Japan’s participation in the talks unless Tokyo agrees to talk about tariffs on politically sensitive goods, such as rice.

In the aftermath of a recent Cabinet reshuffle of some anticipate that Prime Minister Noda will soon announce that Japan’s intention to join the TPP negotiations. Given the ongoing territorial dispute with China, many expect the Prime Minister to focus his sights on joining the TPP as an alternative to negotiations that are supposed to begin by the end of this year on a trilateral trade agreement with China and South Korea, as originally agreed to by the three countries in May. The reasoning is that Japan’s ongoing territorial dispute with China may push the former to move towards another direction first.

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13 Ibid.

With regard to South Korea, its government has indicated it will continue to monitor negotiations in the TPP while it pursues negotiations for FTAs with its Asian neighbors. The government has also said that while it is continuing to study the merits of joining the agreement, they are not in a rush to join in since South Korea already has a bilateral FTA with the US and trade agreements in place with most of the TPP parties. Consequently, South Korea does not think that it is losing much by not joining the negotiations at this point.

Taiwan, meanwhile, has raised the idea of joining the TPP talks during ministerial meetings at APEC last month. While there has been nothing substantial yet with regard to Taiwan’s aspirations, it is nonetheless part of the government’s long-term goal to do so. Currently, it is negotiating agreements with Singapore and New Zealand, both TPP parties. Once agreements have been finalized with these two countries, Taiwan could potentially use them as a building block towards eventually joining the TPP.

China’s territorial claim over Taiwan has historically hindered the latter’s ability to join international organizations and negotiations. However, over the years, Taiwan has been pursuing free trade agreements with a number of countries. One positive thing for Taiwan is that it already participates in APEC along with China and 20 other member economies as “Chinese Taipei, while China is not yet a negotiating party in the TPP - and will not be anytime soon.

The Taiwanese government has indicated that it plans to join the TPP no later than 2020. In order to reach this goal, the government has indicated that it will work towards clearing trade barriers and create conditions for Taiwan’s possible participation in the TPP.

**TPP and the Road Ahead:**

The path towards finalizing an agreement that would economically integrate the various Asia-Pacific countries will not be a walk in the park, as several stumbling blocks have to be addressed and agreed upon remain.

In order to be able to move forward, negotiating parties must agree how ambitious they want this 21st century agreement to be. While the TPP is indeed a far reaching agreement, based on the negotiating areas that have been placed on the table, it remains to be seen how less developed economies (Vietnam, Peru, Mexico, Chile) will be able to cope with the high-standard rules proposed in the negotiations. Given that a lot of the issues being negotiated are

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15 “South Korea Prioritizes Asia Trade Pacts Pver Pacific Partnership” The Asahi Shimbun, May 17, 2012
http://ajw.asahi.com/article/behind_news/politics/AJ201205170023

16 Ibid.


18 Ibid.
beyond the scope of most existing trade agreements (competition policy, government procurement, etc.), some countries may not even have laws in place that address these issues.

Moreover, the high-standard rules may intimidate or deter many countries who might otherwise would want to join the negotiations to not participate, since they might not be able to adapt to the requirements of the TPP. Joining the negotiations might especially be viewed by many developing countries as a futile exercise.

Lastly, the absence of other large economies in the negotiations and the reluctance of others to join due to the ambitious scope of the agreement may lower its intended benefits.