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Negotiations for a Trans-Pacific Partnership Agreement

Draft Discussion Paper

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New Zealand, Singapore, Brunei Darussalam and Chile had formed a trade bloc known as the Pacific-4 (P4) by November 8, 2006, which aimed to eliminate all tariffs between the parties to the agreement by 2015. This comprehensive agreement covers trade in goods and services, intellectual property protection, competition policy, government procurement, customs valuation, technical barriers to trade, sanitary and phytosanitary measures, temporary movement of business persons, trade remedies and dispute settlement. Regarding goods trade, duties will be completely eliminated on trade between New Zealand, Singapore and Chile, and 99 per cent eliminated on trade with Brunei. The services provisions follow the negative list approach, similar to the U.S. agreements with Singapore and Chile.

These four original participants saw this agreement as a potential steppingstone to the wider liberalization process of the Asia Pacific Economic Cooperation (APEC) forum, a group of 21 Pacific Rim countries[1] that includes the U.S. and countries such as China, Indonesia and Russia. APEC's objective is to promote free trade and economic cooperation in the region, and a possible Free Trade Area of the Asia-Pacific (FTAAP) has been a specific goal since 2006.

In 2008 the U.S., Australia, Peru and Vietnam announced that they would join negotiations for an expanded Trans-Pacific Partnership Agreement, and in 2010 Malaysia joined the negotiations. In November 2011 the leaders of these nine nations announced that they had achieved the broad outlines of an ambitious agreement, which could be a model for future free trade agreements. In addition to the areas covered in the original P4 agreement, the scope of the Trans-Pacific Partnership Agreement would include labor, environment, compatibility of regulatory systems, and new emerging issues such as digital technologies.

Canada and Mexico have now been approved by the nine countries to participate in the negotiations, and USTR has submitted letters to Congress that both will be included in the negotiations. Under U.S. procedures, such a notification is to be done 90 days prior to commencing negotiations, which would mean that Canada and Mexico would likely begin active participation in the TPP negotiations in December 2012[2]. Japan has also indicated an interest in joining the TPP negotiations and it is possible that Japan will be approved to participate in the fall, and could also begin active negotiations in December.

Commercial Importance

The combined gross domestic product of the original four TPP countries was only $686 billion in 2011, as can be seen in Table 1. The five additional countries joining the negotiations for the Trans-Pacific Partnership agreement had a combined gross domestic product of $17,157 billion, which would create a nine nation bloc with a total 2011 GDP of $17,843 billion. However, the U.S. accounted for $15,094 billion of this, or some 85 percent of this total.

Our NAFTA partners - Canada and Mexico – have a combined 2011 GDP of $2,892 billion. If Japan were to join the negotiations, the twelve countries would have a combined GDP of $26,604 billion, and the U.S. would account for some 57 percent of the total.

Table 1: Economic and Trade Importance of TPP Countries (2011)
(Millions of U.S. Dollars)

Original 4 Countries	**GDP**	**U.S. Exports**	**U.S. Imports**	**Trade Balance**
Brunei	15,553	184.3	23.4	160.9
Chile	248,411	15,873.4	9,068.8	6,804.6
New Zealand	161,851	3,571.1	3,159.8	411.3
Singapore	259,849	31,393.0	19,110.7	12,282.3
Total	685,664	51,021.8	31,362.7	19,659.1

The Next 5 Countries	**GDP**	**U.S. Exports**	**U.S. Imports**	**Balance**
Australia	1,488,221	27,515.7	10,239.9	17,275.8
Malaysia	278,680	14,217.9	25,771.8	-11,553.9
Peru	173,502	8,319.2	6,235.8	2,083.4
United States	15,094,025	na	na	na
Vietnam	122,722	4,340.7	17,485.2	-13,144.5
Total	17,157,150	54,393.5	59,732.7	-5,339.2

Our NAFTA Partners	**GDP**	**U.S. Exports**	**U.S. Imports**	**Balance**
Canada	1,736,869	280,891.1	316,510.2	-35,619.1
Mexico	1,154,784	197,543.7	263,105.8	-65,562.1
Total	2,891,653	478,434.8	579,616.0	-101,181.2

Potential of Japan	**GDP**	**U.S. Exports**	**U.S. Imports**	**Balance**
Japan	5,869,471	66,168.3	128,811.3	-62,643.0

The U.S. already has free trade agreements with four of the eight other countries involved in the TPP negotiations, specifically Australia, Chile, Peru and Singapore, and we have the North

American Free Trade Agreement (NAFTA) with Canada and Mexico. In essence, we are negotiating free trade agreements with four additional nations – Brunei, New Zealand, Malaysia and Vietnam – which have a combined 2011 gross domestic product of $579 billion; if Japan joined the negotiations that would be an additional market of $5,869 billion.

The real commercial importance of the TPP negotiations, however, extends far past access to new markets of $579 billion or possibly $6,448 billion. First off, the NAFTA agreement was negotiated in 1994, and our free trade agreement model has evolved substantially since that time; the TPP negotiations are an opportunity to deepen trade liberalization achieved in the original NAFTA agreement without reopening what is still a politically divisive issue. Additionally, the agreements with Chile, Singapore and Australia were all negotiated in the early 2000s and trade liberalization in these agreements could also be expanded to some extent. In fact, U.S. proposals in the TPP negotiations would break new ground in trade expansion by addressing cross border data flows and regulatory coherence for the first time in any trade agreement.

Second, expanding trade today requires more than just reducing tariffs – more important is to ease the regulatory burden on trade and promote efficiency. The TPP negotiations include an important initiative to harmonize regulations that impact trade. Additionally, if the rules of origin that define what products can benefit from trade liberalization were harmonized, trade among the 11 or 12 countries could be further expanded.

Third, a trade agreement with Pacific Rim countries is also important because many countries in this region are negotiating agreements among themselves that exclude the U.S.; for example, Korea, China and Japan will be negotiating a trilateral deal between themselves. A successful TPP agreement would ensure the U.S. a player in trade agreements in this critical region.

Finally and most importantly, a successful TPP negotiation could provide a template for future agreements with other APEC countries, particularly China and Russia, and possibly for future WTO negotiations. If these negotiations are to provide such a template, however, it is critical that the rules and coverage of a TPP agreement further our broad national interests, including expanding our trade, promoting employment at home, facilitating economic development of our trade partners, and supporting strong environmental stewardship.

The eleven – and potentially twelve – countries participating in the TPP negotiations are highly diverse, both commercially and in terms of their economic structures. Australia, Brunei, Canada, Japan, New Zealand, Singapore and the U.S. are all wealthy nations; Chile, Mexico and Peru are upper middle income countries; and Malaysia and Vietnam are lower middle income countries. Several have very strong agricultural sectors including Australia and New Zealand, and Vietnam has extensive state-owned enterprises. Some are very open markets – Singapore is arguably the most open world market – and others have relatively protected markets, including Japan and Vietnam. Developing rules to cover these diverse economies is a challenging task, but an agreement that advances the interests of all could provide a valuable template for future trade agreements.

<u>Key Issues</u>

Japanese Participation: Should Japan be permitted to join the negotiations at this time or should it join after an agreement has been negotiated between the current eleven participants?

Participation by Japan would substantially increase the economic importance of the TPP negotiations[3]; Japan's GDP is larger than the combined GDP of the four other TPP countries with whom we do not currently have an agreement, and an agreement that included Japan would be an attractive inducement for others, such as China, to join the TPP at a later date. However, involvement of Japan would significantly complicate the negotiations. Japan has historically maintained an undervalued yen to gain a commercial advantage, and has a very different approach to competition policy than does the U.S. Given Japan's relatively closed market, the U.S. auto industry and some others oppose Japan's participation in the negotiations at this time,[4] arguing that Japan's market access barriers cannot be remedied in a free trade agreement.

Transparency: Should USTR release copies of our proposals in the TPP negotiations to the general public?

Proposals submitted by the U.S. and the other TPP countries are not generally available to the public and even to many in Congress. Instead, consistent with past practice, the TPP negotiators generally only make summaries of positions available. Trade negotiators argue that releasing actual proposals can hinder negotiating strategy in trade negotiations by giving our positions away to our negotiating partners. However, the "devil is often in the details" and many in the private sector and Congress believe they have been unpleasantly surprised by some elements of previous trade agreements. In a letter to USTR, __ members of Congress pressed for more transparency; in response, USTR argues that it is providing greater transparency in these negotiations than ever before.[5] (Because of lack of access to actual proposals, in fact, this paper is based on press reports and interviews with cleared advisors who have seen negotiating texts.)

The "Architecture" of the TPP: Should the TPP have common rules of origin and tariff schedule for all of its members, or should it preserve the rules and carve outs in the existing free trade agreements that the participants have among themselves?

The original four members of the TPP, of course, have a free trade agreement that will eliminate tariffs between themselves and which has extensive rules of origin, and the U.S. has similarly far-reaching FTAs with Australia, Canada, Chile, Japan, Mexico, Peru and Singapore. Other participants and potential participants also have numerous FTAs with other participants; for example, Peru has FTAs with Canada, Japan, Panama, Chile, Mexico and Singapore. The advantage of preserving current unique rules of origin and existing carve outs and exceptions is that it would make it easier politically to pass the final agreement, while the advantage of a common tariff and rules of origin is that it would greatly simplify ease of trading in the TPP bloc and expand real market access opportunities.

Market Access: There are several sectors that are economically and politically sensitive in the U.S. that are opposed to opening the U.S. market in the TPP negotiations, but where our TPP partners are pressing for expanded market access. Should the TPP apply to all sectors or should some carve-outs be allowed?

Some U.S. sectors that are pressing to be excluded from market opening include:

- Sugar: The U.S. maintains a tariff rate quota on sugar, which effectively blocks imports above the quota level. Australia has stated that it wants improved access to our sugar market, and Canada will probably also press for improved access.
- Dairy: Better access to the U.S. dairy market is one of New Zealand's top priorities, but U.S. dairy producers want dairy products to be excluded from any agreement with New Zealand.[6] The U.S. dairy industry argues that some 90 percent of New Zealand's dairy industry is controlled by one company, Fonterra, and that this distorts world trade.
- Textiles, apparel and footwear: One of Vietnam's top goals is better access to the U.S. textile, apparel and footwear markets; this is controversial within our textile and apparel industries and New Balance opposes increased footwear access for Vietnam.

A number of associations representing a broad spectrum of the U.S. economy, such as the Emergency Committee for American Trade, the American Farm Bureau Federation, the Business Roundtable, the Coalition of Service Industries, the National Association of Manufacturers and the U.S. Chamber of Commerce want "a comprehensive agreement that covers every commercial sector and sub-sector of the U.S. economy", including the sugar, beef, dairy, textile and footwear sectors.[7] These organizations argue that if the U.S. excludes specific sectors from the negotiations, our TPP partners will exclude sectors of interest to American exporters.

State Owned Enterprises (SOEs): SOEs can have an unfair commercial advantage over private firms through preferential purchasing arrangements, subsidies provided by the government, regulatory favoritism and other mechanisms. Unfortunately, World Trade Organization rules regarding SOEs are weak. Can more effective rules be developed in the TPP?

Vietnam has some 1,000 SOEs and improved rules are needed to ensure fair competition and, perhaps even more important, improved rules are necessary if the TPP is expanded in the future to include other APEC countries, such as China and Russia. U.S. industry wants to ensure that SOEs do not "nullify or impair" market access in the party's home market, the markets of other TPP countries, and in third country markets. The U.S. proposal reportedly would apply to companies in which the government owned 20 percent or more of the enterprise, and would address such issues as transparency, standards setting, and harm test. Complicating the negotiations, however, is the fact that other countries participating in the TPP negotiations also have State Owned Enterprises (for example the U.S. mortgage giants Freddie Mac and Fannie Mae are SOEs) and whatever rules are developed must also take these interests into account.

Investor-State Provisions: Should investor-state dispute settlement provisions be included in the TPP agreement? If so, should these provisions be modified from the current provisions in many U.S. free trade agreements?

U.S. free trade agreements have generally included an investor-state provision which allows foreign investors in one country to bring claims against the government of another party to an international panel of arbitrators. These provisions are in addition to the regular dispute settlement mechanism in free trade agreements and to the traditional practice of bringing disputes regarding expropriation of investments to a country's domestic court system. U.S.

industry has argued that these provisions are necessary since many countries do not have a strong legal system that would allow an investor to bring a successful case to the domestic courts.

Australia refused to agree to such a provision in the U.S.-Australian free trade agreement and is strongly resisting inclusion of such a provision in the TPP agreement. Additionally, a group of internationally recognized lawyers submitted an open letter to the TPP negotiators opposing inclusion of investor-state provisions; the letter argues that these provisions "threaten to undermine the justice systems in our various countries and fundamentally shift the balance of power between investors, states and other affected parties in a manner that undermines fair resolution of legal disputes."[8] On the other hand, U.S. industry is demanding inclusion of these provisions, and states that "this is an issue that transcends every part of the negotiations."[9]

Capital Controls: Should the TPP allow member countries to impose capital controls in the event of currency instability?

A number of economists, including Kevin Gallagher, Jagdish Bagwati and Dani Rodrik, are concerned that recent U.S. free trade agreements would prevent TPP members from imposing controls on speculative currency flows in the event of an emergency,[10] although the U.S. negotiators deny that this is the case. These economists note that the International Monetary Fund has changed its position from opposing such controls to supporting their use in emergencies.

Additionally, in a May 23 letter to Treasury Secretary Timothy Geithner, Reps. Barney Frank (D-MA) and Sander Leven (D-MI) requested "a written confirmation affirming that U.S. free trade agreements give signatories the flexibility to impose long-term capital controls in the event of a financial crisis without violating their obligations under the deal or opening them up to investor-state claims."[11]

Currency Manipulation: Some countries, notably Japan and China, have undervalued their currencies to gain an unfair trade advantage. International trade rules preventing such manipulation recognize that this is an unfair trade practice, but are useless in addressing the issue. Will it be possible to craft rules in the TPP negotiations that could provide a template for how to deal with this issue?

Intellectual Property Protection: One of the major competitive advantages of the U.S. is the vast amount of intellectual property held by U.S. firms and citizens. The WTO TRIPS agreement represented a significant step forward in assuring better protection of our intellectual property, but it has some weaknesses, including in the area of enforcement. The TPP negotiations are an opportunity to improve on the WTO provisions, but there is substantial concern that U.S. proposals go too far in several areas. Can the TPP negotiations strike the right balance between protecting our intellectual property without unduly restricting access to medicines and other important U.S. objectives?

A number of U.S. Congressman, including Sander Levin, Pete Stark and Charles Rangel have expressed concerns that U.S. proposals would reduce access to affordable medicine by our developing country trade partners. Additionally, some of our TPP partners, notably Australia and New Zealand, have reportedly expressed concerns with elements of the U.S. proposal, such as one that would require criminally prosecuting illegal camcording of movies.

Environment: U.S. proposals to ensure that the TPP advances environmental protection are more far reaching than in any of our free trade agreements to date. However, some of our trade partners are concerned about making environmental obligations enforceable under the normal dispute settlement provisions. Can strong environmental provisions be successfully negotiated?

Similar to other free trade agreements, the U.S. is proposing that TPP members be obligated to enforce their own environmental laws, as well as the provisions under seven multilateral environmental agreements to which they are signatories. Additionally, the U.S. proposal would create new binding commitments in the area of conservation, such as an obligation to maintain domestic laws or regulations that prohibit trade in wildlife or plants that were obtained illegally, and for protection of endangered species and marine fisheries and to prevent trade in illegal logging. Reportedly, some of the other countries, including New Zealand, Chile and Singapore, prefer nonbinding environmental cooperation.

Labor: Similar to a number of our other free trade agreements, our TPP proposals would require TPP members to enforce their own labor laws and regulations and reflect the five fundamental labor rights in the ILO Declaration on fundamental Principles. Both Brunei and Vietnam would have to make major changes to meet these obligations. Will it be possible to negotiate strong labor provisions in the TPP agreement?

Some Other References:
Fergusson, Ian F. and Bruce Vaughn. *The Trans-Pacific Partnership Agreement*. Washington DC: Congressional Research Service. June 25, 2010.

Gordon, Bernard K. “Trading Up in Asia; Why the United States Needs the Trans-Pacific Partnership” in Foreign Affairs, July/August 2012.

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[1] The 21 members of APEC are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taipei, Thailand, U.S. and Vietnam.

[2] The 2002 trade bill which gave the President so-called “Fast Track” negotiating authority required a 90 day notification to Congress before commencing trade negotiations. While this negotiating authority expired in 2007, the Administration is still adhering to this procedure in order to facilitate Congressional approval of an eventual agreement. The letters to Congress regarding Canada are available at http://www.ustr.gov/webfm_send/3496, and the letters regarding Mexico are available at http://www.ustr.gov/webfm_send/3495.

[3] Assistant Trade Representative Wendy Cutler said “the prospect of Japan joining the TPP . . . is important; it’s historic. And frankly it’s exciting”. (Quoted in Gordon, Bernard K. “Trading Up in Asia; Why the United States Needs the Trans-Pacific Partnership”.

[4] A copy of the American Automotive Policy Council’s statement is available at http://www.sddt.com/Commentary/article.cfm?Commentary_ID=267&SourceCode=20120706tza&_t=The+TransPacific+Partnership+expanding+trade+creating+jobs.

[5] A copy of the Congressional letter requesting greater transparency is available at , and the USTR argument that it is providing greater transparency in the TPP negotiations than ever before is available at .

[6] January 25, 2010 comments submitted to the U.S. Trade Representative by the National Milk Producers Federation supporting a total exclusion of all dairy products from any agreement with New Zealand are available at http://www.nmpf.org/files/file/NMPF%20TPP%20FTA%20Comments_012509.pdf (accessed June 20, 2012).

[7] A copy of an October 19, 2011 letter to the President signed by 45 organizations is available at http://www.ecattrade.com/#!__letters-2010-2011 (accessed June 20, 2012).

[8] Source: "An Open Letter from Lawyers to the Negotiators of the Trans-Pacific Partnership Urging the Rejection of Investor-State Dispute Settlement", dated May 8, 2012.

[9] ECAT, along with 30 other business associations urged the President ot include the investor-state mechanism. See ECAT press release dated February 27, 2012, available at http://www.ecattrade.com/#!__letters-2012, accessed June 20, 2012.

[10] 102 economists wrote the negotiators on Feb. 28, 2012 to urge that "the TPA permit governments to deploy capital controls without being subject to investor lawsuits." Letter available at http://www.ase.tufts.edu/gdae/policy_research/TPPAletter.html.

[11] As quoted in the June 1, 2012 issue of "Inside U.S. Trade".