

Key U.S. Interests in the TPP Negotiations

Presented by

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The TPP Leaders' Vision

“We are delighted to have achieved this milestone in our common vision to establish a **comprehensive, next generation regional agreement** that liberalizes trade and investment and addresses new and traditional trade issues and 21st-century challenges. We are confident that this agreement will be a **model for ambition** for other free trade agreements in the future, forging close linkages among our economies, enhancing our competitiveness, benefitting our consumers and supporting the creation and retention of jobs, higher living standards, and the reduction of poverty in our countries.” *Trans-Pacific Partnership Leaders Statement, Honolulu, HI, November 2011 (emphasis added)*

Common Objectives

**“A Model
of
Ambition”**

- ❑ Forging close linkages among our economies,
- ❑ Enhancing our competitiveness,
- ❑ Benefitting our consumers, and
- ❑ Supporting the creation and retention of jobs, higher living standards, and the reduction of poverty in our countries.

Source: Trans-Pacific Partnership Leaders Statement, Honolulu, HI, November 12, 2011 (emphasis added)

Five Features to Define the TPP

“Next-generation, transformative agreement”

- 1) Comprehensive Market Access
- 2) Regional Agreement
- 3) Cross-Cutting Trade Issues
- 4) New Trade Challenges
- 5) Living Agreement

Source: Trans-Pacific Partnership (TPP) Trade Ministers' Report to Leaders, Endorsed by TPP Leaders, Honolulu, HI, November 2011

Key Business Priorities

- Comprehensiveness and Market Access
- Investment
- Intellectual Property
- Innovation and E-Commerce
- Competition Policy and Level Playing Field
- Supply and Production Chains
- Enforcement
- Living Agreement

Comprehensiveness: The Vision

TPP Leaders

- “. . . our common vision to establish a comprehensive, next-generation regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21st-century challenges.”

TPP Trade Ministers

- “We have agreed to pursue an agreement that is comprehensive and ambitious in all areas, eliminating tariffs and other barriers to trade and investment.”

Asia Pacific Businesses

- Business organisations from across the Asia Pacific region expressed strong support for the Trans-Pacific Partnership (TPP) negotiations and urged TPP Leaders to reaffirm their countries’ commitment to a comprehensive, high-standard and ambitious TPP” *Asia Pacific Businesses Urge TPP Leaders to Commit to Conclusion of Comprehensive, High-Standard TPP in 2012*, Nov. 10, 2011

Comprehensiveness and Market Access

□ Comprehensiveness



All products, all sectors,
no complete exclusions

□ Market Access for Goods, Services and Investment

- ▣ Stronger rules on SPS
- ▣ Stronger rules on TBT
- ▣ Non-discriminatory access for services and investment on a negative list basis
- ▣ Non-discriminatory access in government procurement

Investment: 3 Basic Sets of Rules

NON-DISCRIMINATION

NT/MFN treatment of new and existing investors and investment on a negative list basis

Exceptions need to be focused and limited

BASIC PROTECTIONS

- Treatment in accordance with international law, including fair and equitable treatment & full protection and security
- Prompt, adequate & effective compensation for direct and indirect expropriations
- Ban on local content/technology and similar performance requirements
- Free movement of capital

ENFORCEMENT

Investor-state dispute (ISD) settlement for breaches of:

- * investment agreements, and
- * core investment provisions

State-to-state dispute settlement

Enforceable and Investment-Promoting Rules: Current Reality

Enforceability?

- In April 2011 Australia stated its rejection of the basic enforceability tool for investment rules and market access: investor-state dispute settlement.

Basic Rules?

- Stakeholders continue to raise objections and call for no enforcement or exceptions from virtually all government action, giving a pass to the rule of law.

LOTS OF INVESTMENT MYTHS

Myth 1: Investment Obligations Undermine Governments' Right to Regulate in the Public Interest

- Basic rule of law: non-discrimination, fair treatment
- Carefully developed
- What should be above the law?

Myth 2: ISD Panels Are Unaccountable, Undemocratic and Rife with Conflicts

- Expert, respected arbitrators
- Strong ethics rules
- Neutral Referees

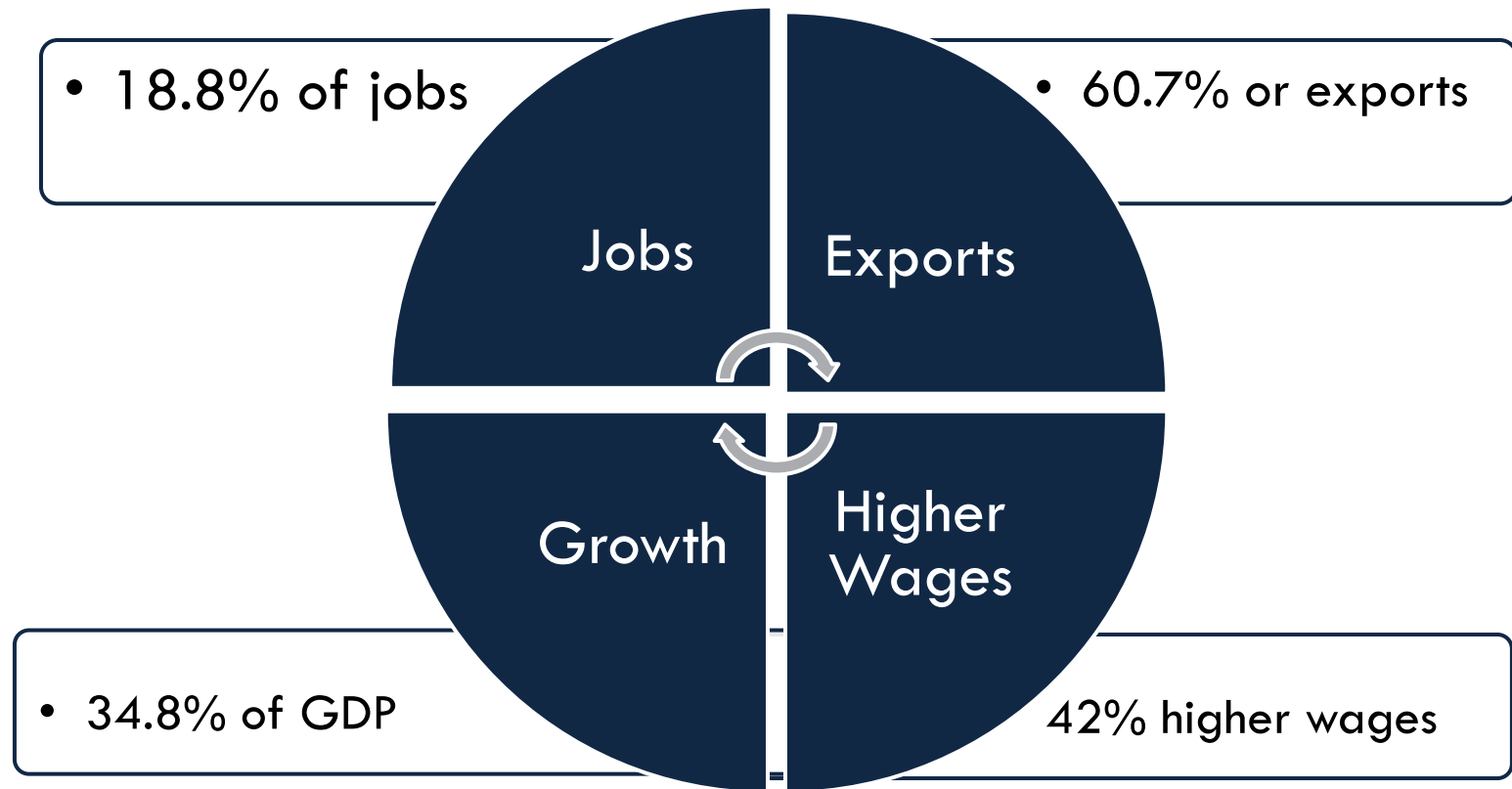
Myth 3: ISD Enforcement Has Led to a Costly Onslaught of Cases

- Trillions of dollars of investment, over 2,700 agreements
- 46 cases in 2011; 450 cases total worldwide

Myth 4: Investment/Financial Services Obligations Prevent Countries from Addressing Crises

- Governments retain significant flexibility
- Prudential exception provides governments ability to take measures necessary for the stability of financial system

Intellectual Property: IP-Intensive Industries and the United States



Source: U.S. Department of Commerce, **Intellectual Property and the U.S. Economy: Industries in Focus** (2012)

Intellectual Property: Important for All

Strong IP protections benefit IP-producers and users:

- Innovation and Competitiveness
- Growth
- Jobs
- Safety and Quality of Life

Intellectual Property: Key Issues

- High-standard protections for patents, copyright, trademarks and trade secrets;
- Robust protections for IP rights online;
- The protection of encrypted signals;
- Anti-camcording disciplines;
- Robust deterrent enforcement, including criminal remedies;
- Terms of protection consistent with U.S. law; and
- High-standard and effective protection of innovators' data, including patent-term extension, patent linkage and data protection.

Innovation and E-Commerce



“New technologies will generate new opportunities for trade and investment among us, but also may raise potential new trade issues we need to address in the agreement so that we can promote trade in these products and services and ensure that all of our economies can benefit. For example, developments in the digital economy, such as cloud computing, create new issues not previously envisioned. Addressing them will facilitate use of this technology, particularly benefitting SMEs, which will comprise the vast majority of companies in the TPP countries and are the source of most job creation.”

Source: Trans-Pacific Partnership (TPP) Trade Ministers' Report to Leaders, Endorsed by TPP Leaders, Honolulu, HA, November 2011

Key Innovation/E-Commerce Issues TPP

- ❑ Cross Border Data Flows – ensuring that governments do not prevent electronic data from crossing borders.
- ❑ Local Infrastructure Requirements – Prohibition against local data storage requirements or use of domestic technology.
- ❑ Privacy – Reasonable requirements for privacy of electronic commerce and associated information.
- ❑ Protection of Intellectual Property – Build upon existing standards to ensure protections that will increasingly spur innovation and economic opportunities.
- ❑ Market Access – No limitations on foreign direct investment.
- ❑ Transparency and Independent Regulator.

Competition Policy and a Level Playing Field

- ❑ Promote a competitive landscape in each country, including through the implementation and enforcement of competition laws by antitrust authorities that are aimed at enhancing consumer welfare.
- ❑ Promote more open markets and a competitive landscape in each country.
- ❑ Address systemic competitiveness issues, including those related to state-owned and state-favored industries.

Supply and Production Chains: Key Goals

Supply Chains are critically important for all industries, all sectors, all levels of development

Efficient Supply Chains expand investment, enhance development, and spread the benefits of trade

Access to Global Supply Chains expand opportunities for SMEs by linking them with larger companies and opening new markets and consumers around the world

TPP presents a unique opportunity to simplify the movement of goods among TPP members and create a multiplier effect to improving the benefits of all parts of the agreement for all TPP countries

Enforcement



- ❑ Provide binding and neutral dispute settlement for all key disciplines, including state-to-state dispute settlement and investor-state dispute settlement.
- ❑ Develop rapid response enforcement mechanism to resolve food and agricultural disputes quickly and fairly
- ❑ Promote strong and clear commitments to ensure stronger enforcement.

Living Agreement



- ❑ Develop mechanisms for the accession of new TPP members in a manner that continues to promote a comprehensive and high-standard agreement.
- ❑ Develop mechanisms to continue work on key issues, including customs and supply chain issues and regulatory coherence.

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Why Does an Ambitious, Comprehensive and High-Standard Outcome Matter?

Creating Jobs

Raising Living Standards

Improving Competitiveness

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