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# The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress

**Ian F. Fergusson, Coordinator**

Specialist in International Trade and Finance

**Mark A. McMinimy**

Analyst in Agricultural Policy

**Brock R. Williams**

Analyst in International Trade and Finance

November 19, 2014

Congressional Research Service

7-5700 [www.crs.gov](http://www.crs.gov)

R42694

## Summary

The Trans-Pacific Partnership (TPP) is a proposed regional free trade agreement (FTA) being negotiated among the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. U.S. negotiators and others describe and envision the TPP as a “comprehensive and high-standard” FTA that aims to liberalize trade in nearly all goods and services and include rules-based commitments beyond those currently established in the World Trade Organization (WTO). The broad outline of an agreement was announced on the sidelines of the Asia-Pacific Economic Cooperation (APEC) ministerial in November 2011, in Honolulu, HI. If concluded as envisioned, the TPP potentially could eliminate tariff and nontariff barriers to trade and investment among the parties and could serve as a template for a future trade pact among APEC members and potentially other countries. Congress has a direct interest in the negotiations, both through influencing U.S. negotiating positions with the executive branch, and by considering legislation to implement any resulting agreement.

Over the summer, President Obama discussed the possibility of achieving some type of TPP outcome on the sidelines of the November 7-11 APEC meetings, but no major breakthrough was announced. TPP Ministers reported that progress is accelerating and that the number of outstanding issues is limited, but this echoes similar statements made in the past following TPP ministerial meetings. The remaining issues are likely the most sensitive for negotiating parties and may require political-level decisions to be made. The negotiating dynamic itself is complex: for example, decisions on key market access issues on dairy, sugar, and textiles and apparel may depend on the outcome of rules negotiations involving intellectual property rights or state-owned enterprises, among other issues.

Over 20 chapters are under discussion in the negotiations. The United States is negotiating market access for goods, services, and agriculture with countries with which it does not currently have FTAs: Brunei, Japan, Malaysia, New Zealand, and Vietnam. Negotiations are also being conducted regarding disciplines on intellectual property rights, trade in services, government procurement, investment, rules of origin, competition, labor, and environment, among other issues. In many cases, the rules being negotiated are intended to be more rigorous than comparable rules found in the WTO. Some topics, such as state-owned enterprises, regulatory coherence, and supply chain competitiveness, may break new ground in FTA negotiations. As the countries that make up the TPP negotiating partners include advanced industrialized, middle income, and developing economies, the TPP, if implemented, may involve restructuring and reform of the economies of some participants. It also has the potential to spur economic growth in the region.

As a leading trade policy initiative of the Obama Administration, the TPP serves several strategic goals. It is a manifestation of the Administration’s “rebalance” to the Asia-Pacific, and if concluded, may serve to shape the economic architecture of the region. It has the potential to harmonize existing agreements with U.S. FTA partners, attract new participants, and establish regional rules on new policy issues facing the global economy—possibly providing impetus to future multilateral liberalization under the WTO.

As the negotiations proceed, a number of issues important to Congress have emerged. One is whether the United States can balance its vision of creating a “comprehensive and high standard” agreement with a large and expanding group of countries, while not insisting on terms that other countries will reject. Another issue is how Congress will consider the TPP, if concluded. The

present negotiations are not being conducted under the auspices of formal trade promotion authority (TPA)—the latest TPA expired on July 1, 2007—although the Administration informally is following the procedures of the former TPA. Different views exist regarding the appropriate timing of potential TPA legislation relative to the possible conclusion of the TPP. Other issues include whether the current chapters included in the agreement appropriately address congressional trade policy concerns and how the potential agreement may impact the multilateral trading system and other trade negotiations, including for a proposed U.S.-EU Trans-Atlantic Trade and Investment Partnership (T-TIP) agreement.

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## Introduction

The Trans-Pacific Partnership (TPP) is a potential free trade agreement (FTA) among 12, and perhaps more, countries (**Figure 1**). The United States and 11 other countries of the Asia-Pacific region—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam—are negotiating the text of the FTA. With over 20 chapters under negotiation, the TPP partners envision the agreement to be “comprehensive and high-standard,” in that they seek to eliminate tariffs and nontariff barriers to trade in goods, services, and agriculture, and to establish or expand rules on a wide range of issues including intellectual property rights, foreign direct investment, and other trade-related issues. They also strive to create a “21<sup>st</sup>-century agreement” that addresses new and cross-cutting issues presented by an increasingly globalized economy.

The TPP draws congressional interest on a number of fronts. Congress would have to approve implementing legislation for U.S. commitments under the agreement to enter into force. In addition, under long-established executive-legislative practice, the Administration notifies and consults with congressional leaders, before, during, and after trade agreements have been negotiated. Furthermore, the TPP will likely affect a range of sectors and regions of the U.S. economy of direct interest to Members of Congress and could influence the shape and path of U.S. trade policy for the foreseeable future.

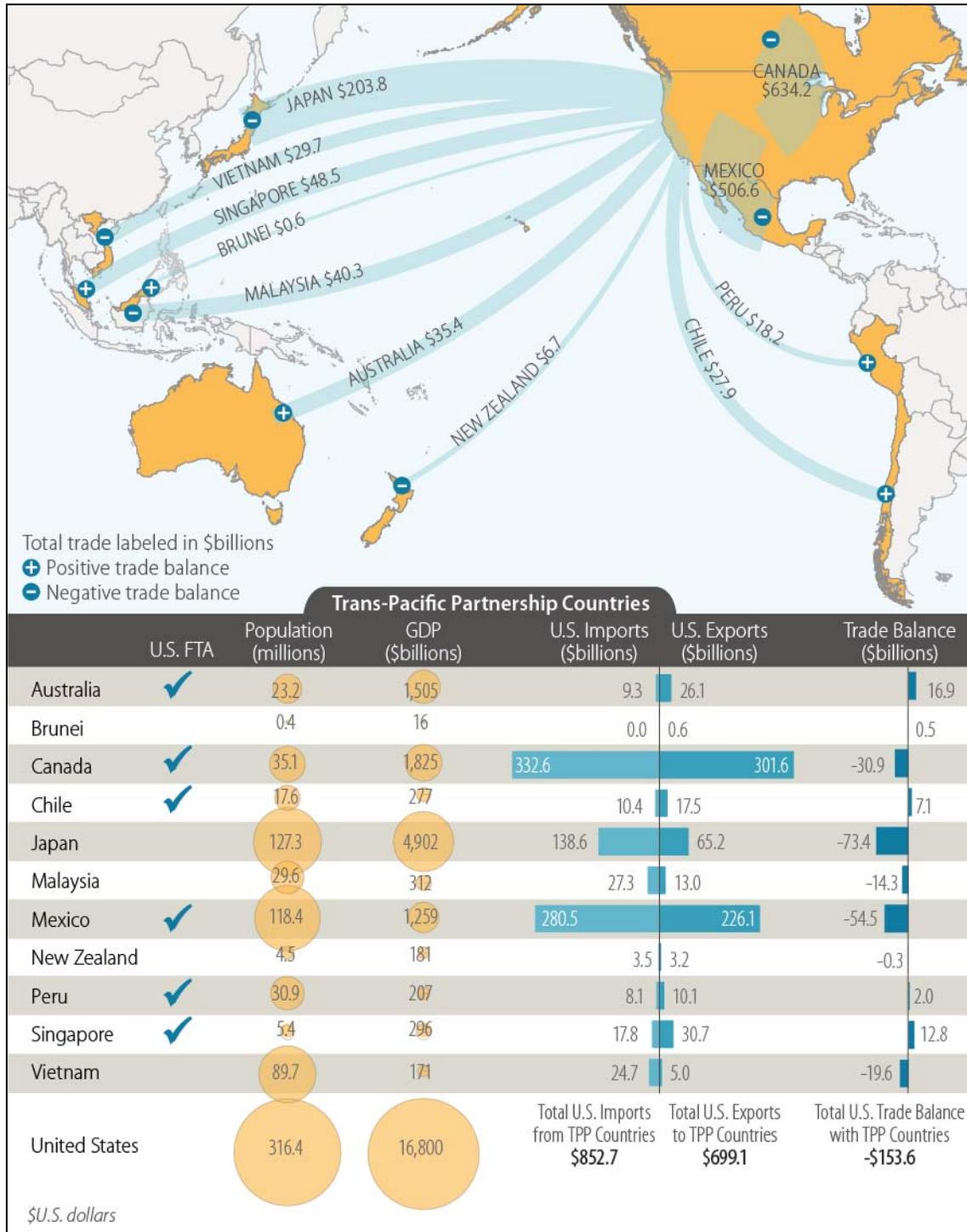
This report examines the issues related to the proposed TPP, the state and substance of the negotiations (to the degree that the information is publically available), the specific areas under negotiation, the policy and economic contexts in which the TPP would fit, and the issues for Congress that the TPP presents. The report will be revised and updated as events warrant.

## The Evolution of the TPP

The Trans-Pacific Strategic Economic Partnership, as it was originally known, was conceived in 2003 by Singapore, New Zealand, and Chile as a path to trade liberalization in the Asia-Pacific region. Brunei joined negotiations in 2005, and the Trans-Pacific Strategic Economic Partnership (P-4) agreement was concluded in 2006. In March 2008, the United States joined the negotiations to conclude the still outstanding investment and financial services provisions. President Bush notified Congress of his intention to negotiate with the existing P-4 members on September 22, 2008, and with other countries, Australia, Peru, and Vietnam, on December 30, 2008.

The Trans-Pacific Partnership is perhaps the most ambitious trade negotiation underway in the world. It will break new ground on important issues from the challenges of state-owned enterprises, to ensuring the free flow of data across borders, to enhancing regional supply chains, to ensuring transparency in cutting red tape. We're also working to strengthen protections for labor and the environment... Our goal is for high standards for the Trans-Pacific Partnership to enter the bloodstream of the global system and improve the rules and norms.  
—Vice President Joseph P. Biden, April 5, 2013

**Figure I. Trans-Pacific Partnership Countries**  
(2013)



**Source:** Analysis by CRS. Population and GDP data from IMF, World Economic Outlook, April 2014. Trade data from the U.S. International Trade Commission (ITC). Total trade includes both imports and exports, but does not include services trade.

After a period of reflection on U.S. trade policy, the Obama Administration decided to continue with the TPP negotiations. On November 14, 2009, President Obama committed the United States to engage with the TPP countries “with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21<sup>st</sup>-century trade agreement.”<sup>1</sup>

President Obama formally notified Congress of his Administration’s intention to enter into negotiations with the TPP countries on December 14, 2009. That notification set off a 90-day timeline under the now-expired 2002 trade promotion authority (TPA) legislation, for congressional consultations prior to the beginning of negotiations.<sup>2</sup> In October 2010, TPP participants agreed by consensus to the inclusion of Malaysia as a negotiating partner.

The negotiating partners announced a framework for the agreement at the sidelines of the Asia-Pacific Economic Cooperation (APEC) Ministerial in Honolulu, HI, November 8-13, 2011. Thereafter, Canada, Japan, and Mexico started to consult with the existing TPP partners on joining the negotiations. After several months of intense bilateral consultations with each of the current TPP countries, those countries agreed by consensus to the inclusion of Mexico and Canada and they began participating as negotiating partners in December 2012. Japan continued to debate internally the question of joining the negotiations, with Prime Minister Abe announcing Japan’s official interest in March 2013. After concluding bilateral consultations, Japan began to fully participate in the TPP negotiations in July 2013.

### **2011 TPP Leaders Statement**

At the 2011 APEC Leaders meeting in Honolulu, the leaders of the (then) nine TPP countries agreed to the broad outlines of an agreement. They categorized the TPP as “a comprehensive, next-generation regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21<sup>st</sup>-century challenges.” TPP trade ministers also highlighted the following five key areas of the agreement.

- **Comprehensive Market Access**—Removal of both tariff and nontariff barriers is “comprehensive and ambitious in all areas.”
- **Regional Agreement**—Fully regional agreement that facilitates trade and the development of production and supply chains among TPP members.
- **Cross-Cutting Trade Issues**—Holistic, agreement-wide approach to specific areas: regulatory coherence, competitiveness and business facilitation, small- and medium-sized enterprises, and development.
- **New Trade Challenges**—Addresses emerging trade issues such as those caused by new technology (e.g., cloud-computing).
- **Living Agreement**—Agreement will “evolve in response to developments in trade, technology or other emerging issues” and expand “to include other economies from across the Asia-Pacific region.”

In early 2014, South Korea began consultations with the TPP negotiating partners over the possibility of joining, but at the time of this writing has yet to make a formal request to join the negotiations. It remains unclear whether the current 12 partners would permit another country’s participation before concluding the initial agreement, although the United States seems to favor waiting until the current negotiations are completed.<sup>3</sup> There is as yet no formal limit to the

<sup>1</sup> Remarks of President Obama at Suntory Hall, Tokyo, Japan, November 14, 2009.

<sup>2</sup> Although TPA expired in 2007, both the Bush and Obama Administrations have continued to adhere to its notification and consultation requirements.

<sup>3</sup> “Froman Welcomes Korean Interest in TPP, Says Entry Would Follow Initial Agreement,” *BNA International Trade Daily*, December 2, 2013.

potential membership of the TPP, aside from excluding those countries unwilling to commit to the ambition of the proposed FTA. All current members of the TPP negotiations are also members of APEC, and the current TPP countries have publically stated that membership expansion will likely focus on other APEC members first, such as South Korea, though other non-APEC countries with a strong focus on trade liberalization, such as Colombia and Costa Rica, have also expressed an interest in joining TPP.

## Current Negotiating Status

The TPP negotiations remain ongoing. Since the last full round in August 2013, negotiations have continued through informal rounds as well meetings among the chief negotiators and Trade Ministers. During the summer, the Obama Administration suggested some type of TPP outcome might be achieved in time for the November APEC meetings.<sup>4</sup> Both TPP Leaders and Ministers met on the sidelines of the November 7-11 meetings, but no major breakthrough was announced. A TPP Leaders statement following the meetings largely reiterated previous announcements, highlighting continued progress, but made mention of a timeline for conclusion, instead stating “with the end coming into focus, we have instructed our Ministers and negotiators to make concluding this agreement a top priority.”<sup>5</sup> Trade Ministers reported that the “progress has accelerated,” and “the number of outstanding issues is now limited.”<sup>6</sup>

Although the outstanding issues may be limited, these issues are also likely the most challenging. The scope of tariff and agricultural quota removal or market access on sensitive products, particularly agricultural goods, as well as provisions over nontariff issues such as intellectual property rights, environment, state-owned enterprises, and investment are reportedly among the most contentious unresolved issues. The United States’ bilateral negotiations with Japan, which include market access, have been particularly challenging as Japan seeks to maintain import protections for several categories of sensitive agriculture products and the United States seeks to address concerns over nontariff barriers in the Japanese auto market. As the two largest TPP economies, these bilateral talks have significant implications for the broader 12-country TPP negotiations and the timing of their conclusion.

### Trade Promotion Authority

Trade Promotion Authority (TPA)—formerly fast track—is a statutory mechanism under which Congress defines negotiating objectives and consultative and notification procedures for trade agreements, and authorizes the President to enter into reciprocal trade agreements governing tariff and nontariff barriers. Under TPA, implementing bills for reciprocal trade agreements are considered under expedited legislative procedures, that is, limited debate, no amendments, and an up-or-down vote. The expedited consideration is conditioned on the President observing certain statutory obligations in negotiating trade agreements, including notifying and consulting Congress. The purpose of TPA is to preserve the constitutional role of Congress to regulate foreign commerce in consideration of implementing legislation for trade agreements that require changes in domestic law, while also bolstering the negotiating credibility of the executive branch by assuring that a trade agreement, once signed, will not be changed during the legislative process. TPA expired in 2007, and although new companion TPA bills, H.R. 3830 and S. 1900, were introduced in January 2014, as of this writing TPA has yet to be renewed.<sup>7</sup>

<sup>4</sup> The White House, “Remarks by President Obama and Prime Minister Key of New Zealand after Bilateral Meeting,” June 20, 2014.

<sup>5</sup> USTR, “Trans-Pacific Partnership Leaders’ Statement,” November 10, 2014.

<sup>6</sup> USTR, “Trans-Pacific Partnership Trade Ministers’ Report to Leaders,” November 10, 2014.

<sup>7</sup> For more information, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson, CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked* (continued...)

While many observers are focused on the current challenges in the negotiations, some argue that the broader strategic interests are not being sufficiently emphasized. According to one commentator, for example, “few voices are heard saying that a TPP agreement will establish American-Japanese leadership in setting a course that will enable greater prosperity throughout the Asia Pacific region.”<sup>8</sup>

## TPP in Strategic Context

If completed as intended, the proposed TPP agreement would strengthen and deepen trade and investment ties among its participants. However, it may also have implications in larger, strategic contexts beyond the immediate participants: for U.S. trade policy in general; for the emerging trade architecture in the Asia-Pacific; for the multilateral trade regime within the WTO; and for U.S. strategic interests in the Asia-Pacific region. The Obama Administration has argued that the strategic value of a potential TPP agreement parallels its economic value:

TPP is as important strategically as it is economically. Economically, TPP would bind together a group that represents 40 percent of global GDP and about a third of world trade. Strategically, TPP is the avenue through which the United States, working with nearly a dozen other countries (and another half dozen waiting in the wings), is playing a leading role in writing the [trade] rules of the road for a critical region in flux.<sup>9</sup>

## TPP and U.S. Trade Policy

U.S. participation in TPP negotiations serves several strategic goals in U.S. trade policy. First, it continues and expands a U.S. trade policy strategy that began with the North American Free Trade Agreement (NAFTA), which entered into force in 1994, of using FTAs to promote trade liberalization and potentially to spark multilateral negotiations in the World Trade Organization (WTO). The George W. Bush Administration expanded the use of this strategy under the rubric of “competitive liberalization,” negotiating 11 FTAs with 16 countries. The last three of these FTAs—with Colombia, Panama, and South Korea—were approved by Congress in 2011.<sup>10</sup> However, the future direction of this policy was uncertain, given the low commercial value of some of these agreements and lack of new obvious partner countries. Meanwhile, an increasing web of bilateral and regional FTAs, were being concluded among other parties in the Asia-Pacific region and worldwide. The Bush Administration’s and, then, the Obama Administration’s support for negotiating a TPP agreement signaled that the United States remains engaged in regional free trade negotiations.

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(...continued)

*Questions*, by Ian F. Fergusson, Richard S. Beth, and William H. Cooper, and CRS Report IF00002, *Trade Promotion Authority (TPA) (In Focus)*, by Ian F. Fergusson.

<sup>8</sup> Dennis C. Blair, “Who Decides Pacific Trade?,” *New York Times*, November 5, 2014.

<sup>9</sup> USTR, “Remarks by Ambassador Michael Froman at the Council on Foreign Relations: The Strategic Logic of Trade,” June 16, 2014, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/June/Remarks-USTR-Froman-at-Council-Foreign-Relations-Strategic-Logic-of-Trade>.

<sup>10</sup> The United States now has FTAs in force with 19 countries. These countries include Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, South Korea, and Singapore.

The TPP arguably provides the United States with the opportunity to project its trade interests by negotiating a “comprehensive and high standard” FTA with provisions that build on those in FTAs the United States concluded throughout the 2000s, especially the most recent FTAs, such as the U.S.-Korea FTA (KORUS). The TPP partner countries share a reliance on world trade and have been some of the greatest advocates for trade liberalization. While they differ in economic levels of development, they have committed themselves to negotiating a comprehensive FTA. That, by itself is not new; the United States has often conducted asymmetrical negotiations with countries of differing levels of development in which it has dominated. This time, however, with more players at varied levels of development, and with an economic heavyweight like Japan participating, concluding the negotiations may require greater compromise by all participants.

Practically speaking, the TPP approach could eclipse the alternative model of narrower goods-based FTAs that are offered by China, or other countries, or somewhat more comprehensive agreements used by the European Union and Japan that, nonetheless, exclude sensitive agriculture products. Adoption of these other models, even if open to U.S. participation, could be seen as disadvantageous to U.S. farmers, businesses and workers because they exclude provisions important to U.S. commercial trade—agriculture, disciplines on services, investment, and intellectual property rights, as well as enforceable provisions on labor and environment. In addition, the TPP aims to establish disciplines on new trade issues, such as state-owned enterprises or supply chain facilitation that could serve as a model for future negotiations bilaterally, regionally, or in the WTO.

## **The TPP and the WTO**

Though structured as a regional FTA, the TPP may have an impact on the multilateral process of the WTO and the Doha Development Agenda (Doha Round) of multilateral trade negotiations. While the WTO ministers continue to discuss a Doha Round agenda that critics contend is increasingly irrelevant to the present trading system, the TPP represents a way for the United States and its partners to advance discussions of a “21<sup>st</sup>-century trade agenda.”

The influence of the TPP impact could be great due to its potential expansion and, hence, the fact that it could eventually affect a substantial amount of world trade—over 60% of U.S. trade alone is with other APEC members. The debate over whether FTAs have a positive or negative effect on the multilateral system continues. Proponents of bilateral and regional agreements would argue that:<sup>11</sup>

- successful negotiation and implementation of proposed new trade rules in the TPP, on such emerging issues as state-owned enterprises and regulatory coherence, could serve as a template for future WTO negotiations;
- a successful TPP agreement among the current negotiating partners could cause other regional economies to consider joining (as seen with the addition of Canada, Japan, and Mexico) in order to ensure they remain competitive in TPP markets, thus furthering the WTO goal of greater global trade liberalization; and

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<sup>11</sup> These arguments regarding FTAs have been placed in a TPP context, but are drawn largely from Jeffrey J. Schott, “Free Trade Agreements: Boon or Bane of the World Trading System,” in *Free Trade Agreements US Strategies and Priorities*, ed. Jeffrey J. Schott (Institute for International Economics, 2004).

- TPP could help promote and ensure the longevity of domestic economic policy reforms, particularly for countries such as Vietnam.

Opponents, however, would counter that:

- efforts toward the TPP and other regional/bilateral FTAs may divert attention and resources from multilateral WTO efforts;
- increased trade among TPP members due to the preferential tariff structures of the agreement could simply be diverted from other regions rather than be newly-created; and
- the spread of FTAs may actually make international commerce more difficult as companies must navigate varying rules and standards associated with different agreements.<sup>12</sup>

This last issue of overlapping trade rules may be particularly relevant for the potential TPP agreement as it will encompass countries with numerous existing FTAs. The proposed TPP agreement could add another layer of complexity or it could simplify the existing trade rules in the region by unifying them under one agreement. For example, according to the USTR, the TPP countries have committed to establishing a common set of rules of origin for determining whether a product originates inside the TPP.<sup>13</sup> How these and other trade rules inside the potential TPP agreement relate to those in existing FTAs will be of interest moving forward.

## **The TPP and the “Rebalance” in the Asia-Pacific Region**

The centerpiece of our economic rebalancing is the Trans-Pacific Partnership (TPP)—a high-standard agreement the United States is crafting with Asia-Pacific economies from Chile and Peru to New Zealand and Singapore.[ ... ] We always envisioned the TPP as a growing platform for regional economic integration. —*Thomas Donilon, U.S. National Security Adviser, March 11, 2013.*

The TPP has potential implications beyond U.S. economic interests in the Asia-Pacific. The region has become increasingly viewed as of vital strategic importance to the United States. Throughout the post-World War II period, the region has served as an anchor of U.S. strategic relationships, first in the containment of communism and more recently as a counterweight to the rise of China. This trend has recently been accentuated by the Obama Administration’s “pivot to Asia,” along with the perception that the center of gravity of U.S. foreign, economic, and military policy is shifting to the Asia-Pacific region. The TPP is viewed as an important element in the U.S. “rebalancing” toward Asia.<sup>14</sup>

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<sup>12</sup> This is the so-called “spaghetti bowl” effect of FTAs put forward by Jagdish Bhagwati, Professor of Economics and Law at Columbia University. His view on the TPP agreement is expressed in his op-ed article on the Project Syndicate website at <http://www.project-syndicate.org/commentary/bhagwati20/English>.

<sup>13</sup> USTR, “Outlines of the Trans-Pacific Partnership Agreement,” fact sheet, November 2011, <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>.

<sup>14</sup> For more information, see CRS Report R42448, *Pivot to the Pacific? The Obama Administration’s “Rebalancing” Toward Asia*, coordinated by Mark E. Manyin.

## The TPP and Other Asia-Pacific Trade Agreements

The current 12 TPP countries already form part of a growing network of Asia-Pacific FTAs (**Figure 2**).<sup>15</sup> The United States has FTAs in place with six of the TPP countries: Australia, Canada, Chile, Mexico, Peru, and Singapore. In addition, the proposed TPP seeks to build on the existing Trans-Pacific Strategic Economic Partnership (P-4), a free trade area among Brunei, Chile, New Zealand, and Singapore. The current TPP partners also include 4 of the 10 members of the Association of Southeast Asian Nations (ASEAN): Brunei, Malaysia, Singapore, and Vietnam.<sup>16</sup> ASEAN countries have negotiated a free trade area amongst each other as well as several external FTAs. All 12 TPP partners are also members of the 21-member Asia-Pacific Economic Cooperation (APEC) forum, which does not negotiate FTAs among its membership, but serves as a forum for dialogue on and establishes nonbinding commitments toward the goals of open and free trade and investment within the region.<sup>17</sup>

To some, the United States and its TPP partners are jump-starting the consensus-based approach of APEC. In the context of this forum for dialogue and nonbinding commitments, APEC Leaders in 2010 agreed to push forward the creation of a Free Trade Area of the Asia-Pacific (FTAAP), and it continues to be a broad vision for the group. They acknowledged the TPP as potentially one of a number of “ongoing regional undertakings” on which to build to eventually achieve an FTAAP.<sup>18</sup> Other ongoing regional undertakings include potential trade agreements between ASEAN and other Asian countries.

The Regional Comprehensive Economic Partnership (RCEP), for example, would join ASEAN and its six FTA partners—Australia, China, India, Japan, New Zealand, and South Korea—in one collective FTA. It is unclear how these two regional undertakings, RCEP and TPP, may impact one another and how they will affect the potential for an FTAAP.<sup>19</sup> The RCEP may not aim for the same level of ambition in terms of tariff reduction and trade liberalization as the TPP. By allowing sensitive items or rules to be left out of the negotiations, this platform could be more appealing to countries less inclined to the declared, if yet unrealized, high-standard ambitions of the TPP.

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<sup>15</sup> See CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

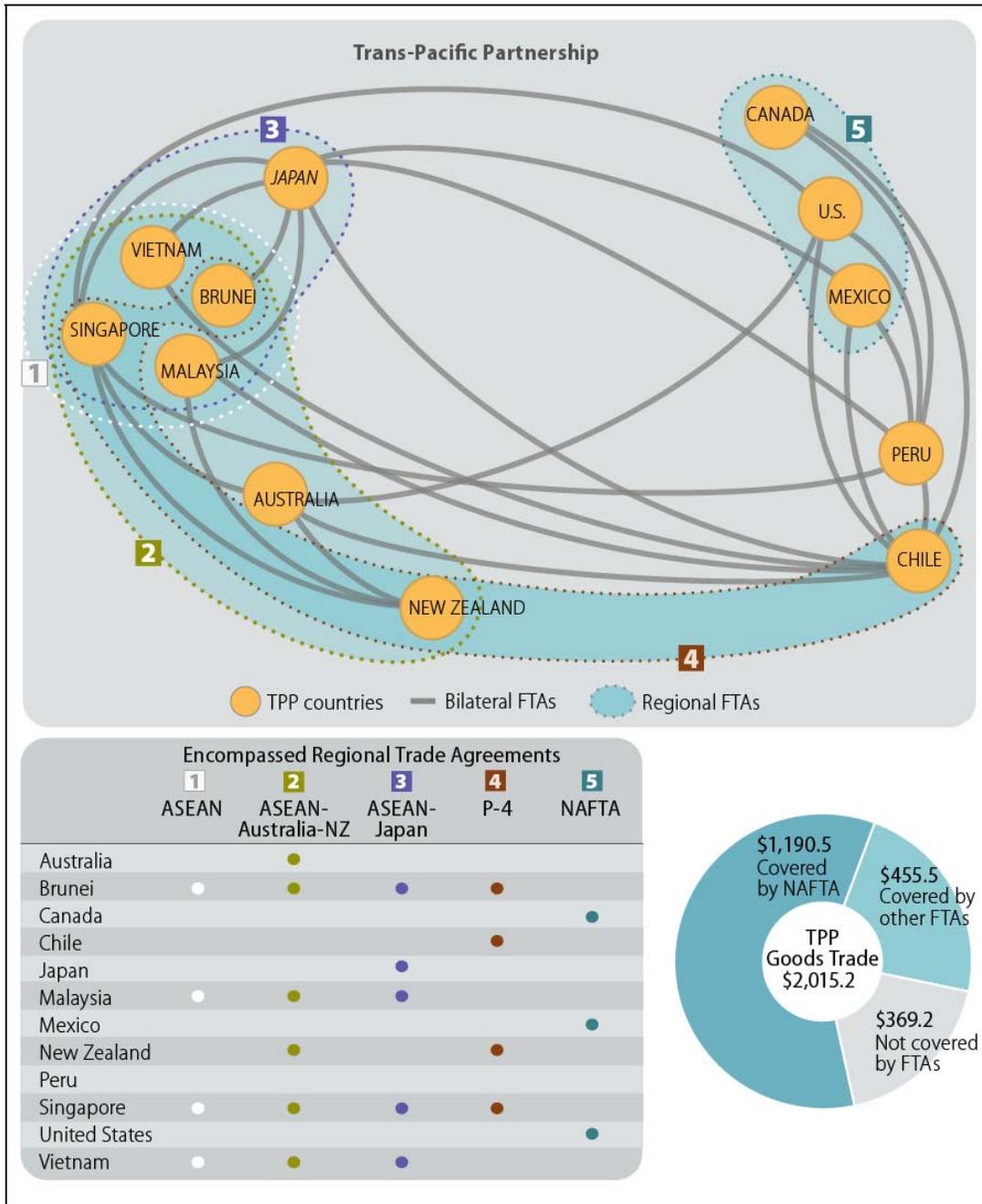
<sup>16</sup> The 10 ASEAN members are Brunei, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

<sup>17</sup> APEC consists of Australia, Brunei, Canada, Chile, China, Hong Kong (officially Hong Kong, China), Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, South Korea, Taiwan (officially, Chinese Taipei), Thailand, the United States, and Vietnam.

<sup>18</sup> Asia-Pacific Economic Cooperation, *2010 Leaders' Declaration*, November 2010, [http://www.apec.org/Meeting-Papers/Leaders-Declarations/2010/2010\\_aelm.aspx](http://www.apec.org/Meeting-Papers/Leaders-Declarations/2010/2010_aelm.aspx).

<sup>19</sup> A recent quantitative study by the East-West Center and the Peterson Institute considers the possibility of TPP and ASEAN+ agreements simultaneously expanding in the Asia-Pacific and models the welfare gains from each agreement eventually leading to an FTAAP. Due to the assumption that the TPP agreement would involve greater liberalization, the model predicts greater welfare benefits from an FTAAP based on the TPP. See textbox “TPP Economic Impact Predictions” below for more information.

Figure 2. Existing FTAs among TPP Countries



**Source:**WTO FTA database and websites of TPP countries' trade ministries. Trade data from IMF.

**Notes:** Aggregate TPP goods trade, both imports and exports, as reported above. ASEAN also includes countries outside the TPP: Burma (Myanmar), Cambodia, Indonesia, Laos, the Philippines, and Thailand. TPP goods trade covered by existing FTAs, as depicted above, reflects all goods trade between FTA partners. This measure slightly overstates trade covered under FTAs, as most FTAs exclude market access for at least some goods.

Yet, several countries, including Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam, are moving forward as negotiating partners in both the TPP and RCEP and view these negotiations as complementary. The TPP partners, including the United States, have also expressed an interest in expanding the TPP to additional countries across the Asia-Pacific region. They maintain that new members are welcome so long as they strive for the same level of trade liberalization as the current negotiating partners.

Many policy observers note the absence of China, the region and world's second-largest economy, from the ongoing negotiations. At a November 20, 2013, speech, National Security Advisor to the President Susan Rice reiterated U.S. policy that, "we welcome any nation that is willing to live up to the high standards of this agreement to join and share in the benefits of the TPP, and that includes China."<sup>20</sup> The degree to which a potential TPP agreement and its participants are prepared to include China, as well as China's willingness or interest in participating in a comprehensive agreement, will help determine if the TPP truly has the potential to become an FTAAP. With the agreement's focus on expansion throughout the region, the current negotiating partners may wish to establish disciplines now on certain aspects of the Chinese and other Asia-Pacific economies. This may, in part, explain the push for potential new disciplines on state-owned enterprises inside the TPP.

## Economic Significance<sup>21</sup>

The overall economic impact of the potential TPP agreement will depend on a number of factors, including the extent of the liberalization achieved in the agreement, as well as the current level and potential growth of trade and investment with TPP members. On both measures, the TPP appears significant given that the TPP region accounts for a large share of U.S. trade and investment, and TPP negotiators have expressed their intent to achieve a "comprehensive and high-standard" FTA that will broadly liberalize regional trade and investment. From the U.S. perspective, a significant share of this liberalization has already occurred due to existing U.S. FTAs with 6 of the 11 TPP partners, although potential disciplines in areas not covered in previous FTAs may be significant for some sectors (**Figure 3**).

Japan's entry, however, has changed this dynamic somewhat. Without Japan in the agreement, only 6% of total U.S.-TPP trade in 2013 was with countries not party to an existing U.S. FTA (and hence with greater scope for trade liberalization with the United States); with Japan in the agreement that number rises to 18% for U.S.-TPP merchandise trade, and even further to 31% for U.S.-TPP services trade. As a high-income country, U.S.-Japan trade differs considerably from U.S. trade with the other, mostly lower-income negotiating partners without U.S. FTAs. Hence, Japan's participation in the agreement has drawn the interest of a wide range of U.S. industries, including sectors like agriculture, automotive, and insurance.

Malaysia and Vietnam also stand out in terms of their current trade and investment with the United States and their potential for future growth. Together these countries have a population of

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<sup>20</sup> Susan E. Rice, "America's Future In Asia," November 30, 2013, <http://www.whitehouse.gov/the-press-office/2013/11/21/remarks-prepared-delivery-national-security-advisor-susan-e-rice>.

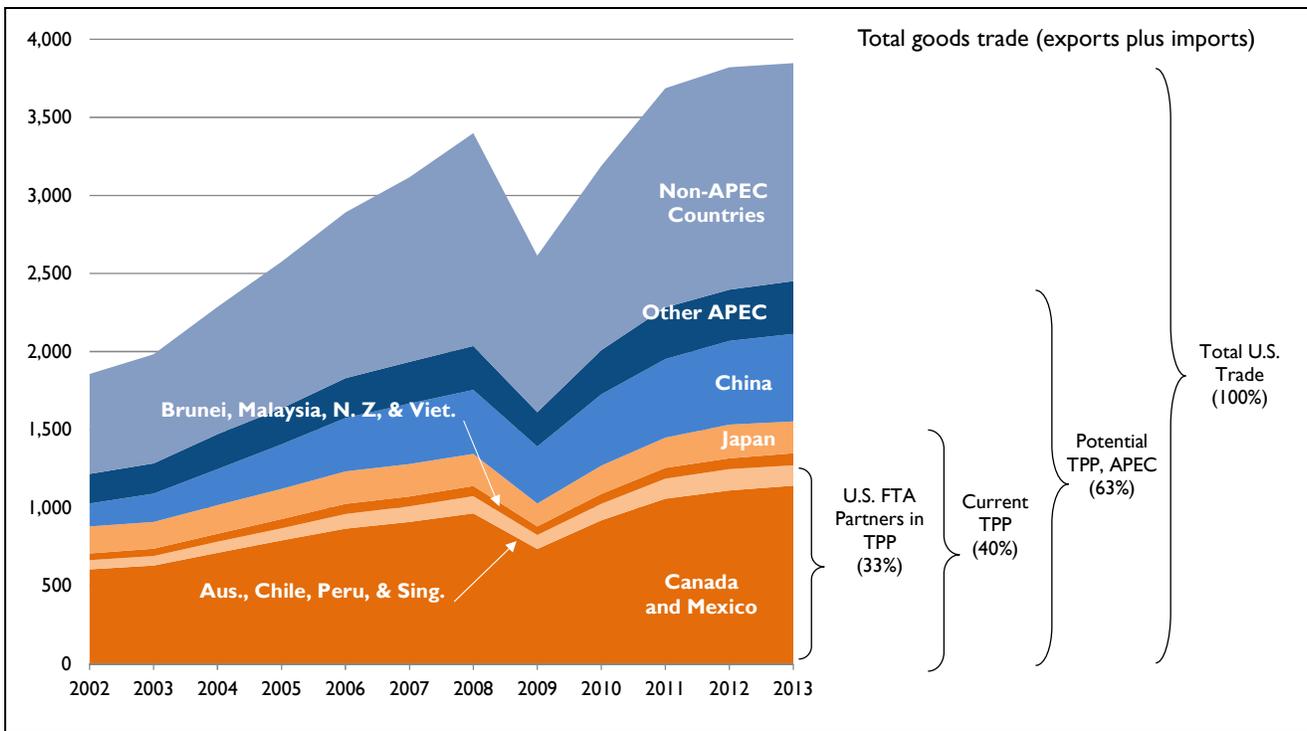
<sup>21</sup> For more information, see CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

over 120 million and their economies have experienced rapid growth in recent years.<sup>22</sup> Moreover, Malaysia’s and Vietnam’s average applied MFN tariffs—the average tariff on imports from other members of the WTO, such as the United States—are 6.5% and 9.5%, respectively, two of the highest levels among TPP members (**Figure 6**).

**Key U.S.-TPP Trade Statistics**

- TPP countries collectively represent the largest U.S. trading partner, accounting for 40% of total U.S. goods trade in 2013 and 24% of total U.S. services trade in 2013;
- U.S. FTAs already exist with 6 U.S. trading partners among TPP participants, particularly Canada and Mexico, which account for 74% of U.S. goods trade with TPP partners in 2013 and 52% of U.S.-TPP services trade in 2013; and
- the agreement has the potential to expand in an economically important region and, most recently, has expanded to include Japan, a country without an existing U.S.-FTA and which accounted for 5% of all U.S. goods trade in 2013 and 7% of all U.S. services trade in 2013.

**Figure 3. U.S.-World, APEC, and TPP Goods Trade**  
(in billions of U.S. dollars)



**Source:** Analysis by CRS. Data from the International Trade Commission.

<sup>22</sup> Vietnam’s GDP growth has slowed somewhat relative to the high rates it achieved during the past decade. In 2013 its growth rate was 5.4%, according to the International Monetary Fund’s World Economic Outlook, compared to an average growth rate of 7.3% in the period 2001-2010.

### TPP Economic Impact Predictions

Several studies in recent years have attempted to project the long-term impact of the potential TPP on member and nonmember states. The absence of a concrete agreement makes it extremely difficult to accurately calculate such impacts. Without access to clearly defined tariff reduction timetables and NTB removal guidelines, there are necessarily many assumptions involved in any attempt to model TPP's future effects on total welfare. Because of these uncertainties, the results of these existing studies should be interpreted with caution.

The primary model to be published in recent years is a 2011 study by Peter Petri, Michael Plummer, and Fan Zhai for the Peterson Institute for International Economics (PIIE).<sup>23</sup> The authors continue to update the model with some regularity (most recently in April 2013) and publish raw output on their website.<sup>24</sup> Most recent data show modest net gains for the United States in all TPP scenarios. In a TPP agreement including South Korea and Japan, they project the United States to see welfare gains of about \$36 billion above a baseline projection (or 0.19% of baseline GDP).

These gains will not be spread uniformly throughout the economy, according to the model. They project the U.S. manufacturing sector to experience a \$44 billion drop in total welfare from baseline, and the agriculture and mining sectors to see a combined near-zero increase. However, the services sector is projected to see welfare gains of more than \$79 billion, offsetting the negative impact on manufacturing.

A 2012 study by the National Bureau of Economic Research (NBER) projects a welfare increase of near-zero with complete elimination of import tariffs. Assuming the additional elimination of all NTB costs in goods and services, the paper projects a U.S. welfare gain of 0.22% of GDP.<sup>25</sup>

A 2014 paper co-authored by a Purdue University economist makes findings that are similar to those of the Peterson model. The study projects U.S. annual welfare gains by 2025 of \$33 billion above a baseline, only slightly lower than the Peterson outlook.<sup>26</sup>

Other studies include a 2013 paper by the Center for Economic Policy Research (CEPR), which focuses on median wage impact rather than total welfare. Author David Rosnick suggests that at best, TPP will have a near-zero impact on U.S. median wages by 2025 and may be directly responsible for a 0.6% drop in U.S. median wage.<sup>27</sup> The methodology used in this study is based on extrapolating the change in U.S. trade balances following the implementation of other trade agreements, such as NAFTA, and using it to predict the impact of TPP, and differs considerably from the computable general equilibrium (CGE) models used in the other studies cited.<sup>28</sup>

**Note:** This section was prepared by Gabriel Nelson.

## U.S.-TPP Trade and Investment

U.S. trade with TPP countries in 2013 was more than \$1.5 trillion in merchandise and more than \$273 billion in services (**Table 1** and **Table 2**). U.S. foreign direct investment (FDI) into TPP countries totaled nearly \$86 billion in 2013, while TPP countries invested more than \$69 billion in the United States (**Table 3**). Even before Canada and Mexico became negotiating partners in

<sup>23</sup> Peter Petri, Michael Plummer, and Fan Zhai, *The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment*, Peterson Institute for International Economics, October 2011: [http://www.usitc.gov/research\\_and\\_analysis/documents/petri-plummer-zhai%20EWC%20TPP%20WP%20oct11.pdf](http://www.usitc.gov/research_and_analysis/documents/petri-plummer-zhai%20EWC%20TPP%20WP%20oct11.pdf).

<sup>24</sup> Peter Petri, Michael Plummer, and Fan Zhai, "Asia-Pacific Trade," April, 2013: <http://asiapacifictrade.org/>.

<sup>25</sup> Chunding Li and John Whalley, "China and the TPP: A Numerical Simulation Assessment of the Effects Involved," National Bureau of Economic Research, May, 2012: <http://www.nber.org/papers/w18090.pdf>.

<sup>26</sup> G. Badri Narayanan and Sachin Kumar Sharma, Centre for WTO Studies, "An Analysis of Trans-Pacific Partnership (TPP): Implications for Indian Economy," May, 2014: <http://wtocentre.iift.ac.in/workingpaper/workingpaper14.pdf>.

<sup>27</sup> David Rosnick, Center for Economic and Policy Research, "Gains from Trade? The Net Effect of the Trans-Pacific Partnership Agreement on U.S. Wages," September, 2013: <http://www.cepr.net/documents/publications/TPP-2013-09.pdf>.

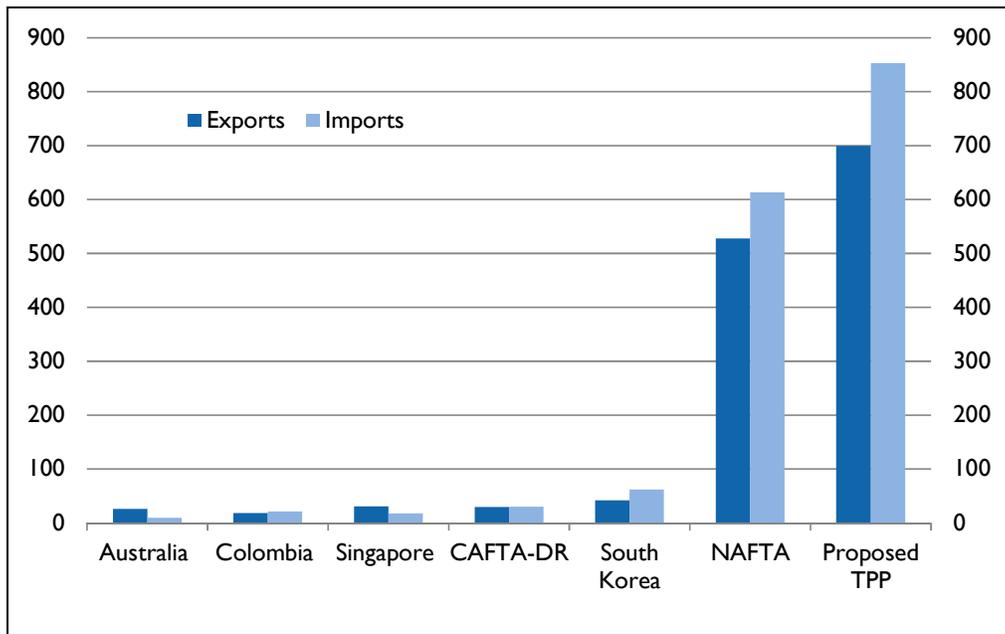
<sup>28</sup> For more on economic analysis of trade agreements, see CRS Report R41660, *U.S.-South Korea Free Trade Agreement and Potential Employment Effects: Analysis of Studies*, by Mary Jane Bolle and James K. Jackson.

the TPP, the agreement had the potential to become the second-largest U.S. FTA by trade flows. Now with the NAFTA countries and Japan participating, the TPP has the potential to become the largest U.S. FTA (**Figure 4** and **Figure 5**).

The current group of 12 countries is diverse in population, geographic location, and economic development, and U.S. trade relations with the countries reflect this diversity. The major U.S. merchandise exports are fairly similar to most TPP countries and include motor vehicles and parts; petroleum and coal products; computer equipment, semiconductors, and electronic components; agriculture and construction machinery; and aircraft. However, the top U.S. merchandise imports vary greatly by country. Agriculture and natural resources products are key U.S. imports from Australia, Chile, New Zealand, and Peru, while apparel products are the main U.S. imports from Vietnam. Canada and Mexico are both major suppliers of crude oil to the United States, but they also supply manufactured products like motor vehicles and motor vehicle parts. U.S. imports from Malaysia and Singapore consist primarily of manufactured products such as computers, semiconductors, and electronic components. Motor vehicles and motor vehicle parts make up over 35% of U.S. goods imports from Japan.

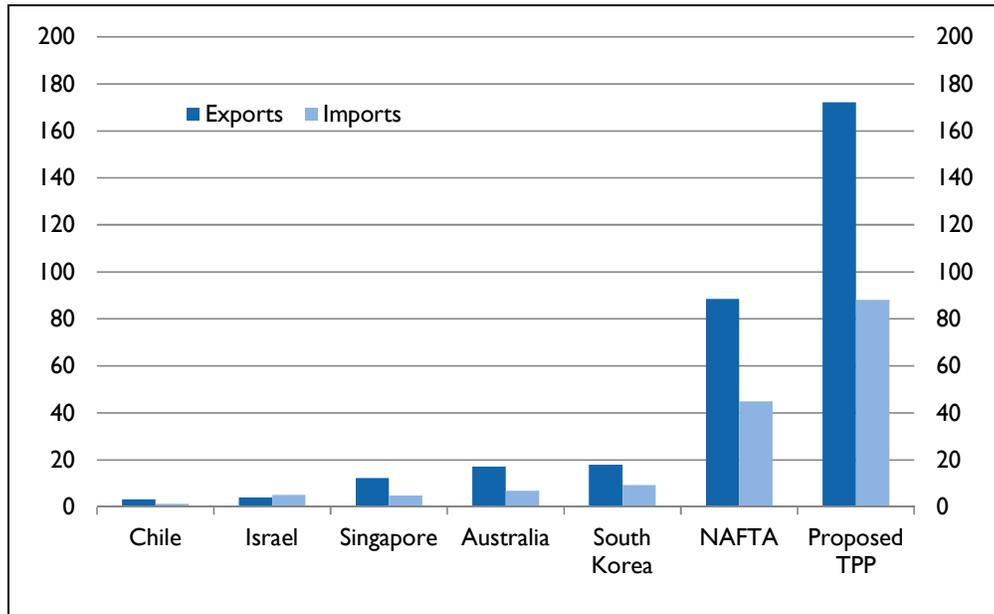
In terms of value, Canada and Mexico are by far the largest U.S. trading partners among TPP countries in goods, and both are significant U.S. services trade and investment partners. Both countries share a large border with the United States and are among the oldest U.S. FTA partners. Japan is the third-largest U.S.-TPP goods trade partner, and second-largest services trade and investment partner. Considering the other eight TPP partners, Singapore and Australia are the top U.S. goods export markets and top overall services trade and investment partners with the United States, while Malaysia, Vietnam, and Singapore are the top sources of U.S. goods imports.

**Figure 4. Largest U.S. FTAs—Goods**  
(in billions of U.S. dollars, 2013)



Source: Analysis by CRS. Data from ITC.

**Figure 5. Largest U.S. FTAs—Services**  
(in billions of U.S. dollars, 2012)



**Source:** Analysis by CRS. Data from BEA.

**Notes:** Services trade data not available for all FTA partners.

**Table 1. U.S. Goods Trade with TPP Countries, 2013**  
(in millions of U.S. dollars, ordered by total trade)

Country	Exports	Imports	Balance	Total Trade
Canada	301,610	332,553	-30,943	634,163
Mexico	226,079	280,529	-54,450	506,608
Japan	65,206	138,573	-73,367	203,779
Singapore	30,672	17,843	12,829	48,515
Malaysia	13,007	27,289	-14,282	40,296
Australia	26,130	9,272	16,858	35,402
Vietnam	5,036	24,657	-19,621	29,693
Chile	17,515	10,384	7,131	27,899
Peru	10,102	8,122	1,980	18,224
New Zealand	3,225	3,487	-262	6,712
Brunei	558	17	541	575
<b>Total</b>	<b>699,140</b>	<b>852,726</b>	<b>-153,586</b>	<b>1,551,866</b>

**Source:** U.S. International Trade Commission.

**Notes:** U.S. general imports, U.S. total exports.

**Table 2. U.S. Private Services Trade with TPP Countries, 2013**  
(in millions of U.S. dollars, ordered by total trade)

Country	Exports	Imports	Balance	Total Trade
Canada	63,281	30,452	32,829	93,733
Japan	46,270	30,006	16,264	76,276
Mexico	29,855	17,766	12,089	47,621
Australia	19,136	6,948	12,188	26,084
Singapore	11,404	5,559	5,845	16,963
Chile	3,608	1,207	2,401	4,815
New Zealand	2,110	1,516	594	3,626
Malaysia	2,687	1,481	1,206	4,168
Total	178,351	95,221	83,130	273,572

**Source:** Bureau of Economic Analysis, U.S. International Services, Detailed Statistics for Cross-Border Trade, Table 2.

**Notes:** BEA does not collect services trade data from every partner country.

**Table 3. U.S. Foreign Direct Investment (FDI) with TPP Countries, 2013**  
(in millions of U.S. dollars, ordered U.S. FDI Flow Abroad)

Country	U.S. FDI Abroad (Flow)	U.S. FDI Abroad (Stock)	FDI in U.S. (Flow)	FDI in U.S. (Stock)
Canada	23,155	368,297	23,336	237,921
Australia	22,951	158,996	-3,079	44,742
Singapore	17,452	154,438	1,148	19,760
Mexico	7,626	101,454	3,130	17,610
Chile	3,624	41,110	62	487
Peru	1,425	10,061	-20	100
Japan	7,368	123,174	44,861	342,327
Malaysia	2,724	16,409	-41	635
New Zealand	-846	7,919	-39	972
Vietnam	234	1,398	-287	-276
Brunei	16	132	(D)	(D)
Total	85,729	983,388	69,071	664,278

**Source:** Bureau of Economic Analysis.

**Notes:** (D) denotes information suppressed to protect individual company data.

Negotiating Topics in TPP (Potential Chapters)	
Goods Market Access	Competition/State-owned Enterprises
Agriculture Market Access	Trade Remedies
Textiles and Apparel	Transparency
Customs/Trade Facilitation	Labor
Rules of Origin	Environment
Technical Barriers to Trade	Cooperation and Capacity Building
Sanitary and Phytosanitary Standards	Regulatory Coherence
Services	Business Facilitation and Competitiveness (supply chains)
Investment	Development
Financial Services	Small- and Medium-Sized Enterprises
Telecommunications	Institutional Chapters
E-Commerce/Digital Trade	-Dispute Settlement
Temporary Entry	-Living Agreement
Intellectual Property Rights	-Exceptions
Government Procurement	-Definitions

Source: Previous U.S. FTA chapters and USTR press releases on TPP negotiations.

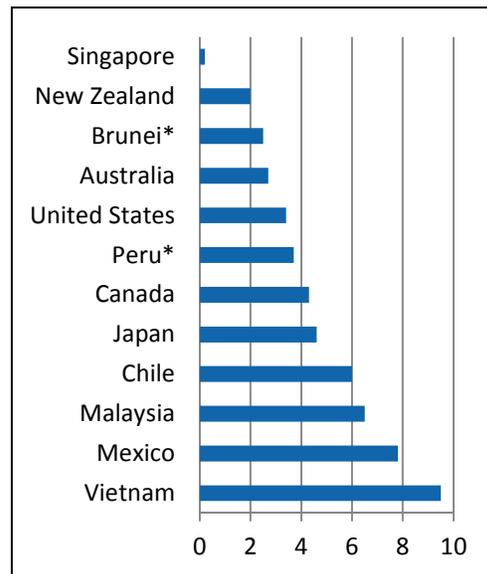
## Core Negotiating Issues: Market Access

Market access for goods, services, and agriculture often forms the crux of FTA negotiations. However, nontariff barriers such as technical barriers to trade and sanitary and phytosanitary standards, while considered rules, also have an impact on market access. Negotiations on these latter issues are designed to ensure that, as tariff barriers are reduced, they are not replaced by other forms of protection.

### Market Access for Goods and Services

A fundamental element of most FTAs is commitments among FTA partners to eliminate most, if not all, tariffs and quotas on their trade in goods. Current average most-

Figure 6. Average MFN Applied Tariffs



Source: WTO Tariff Profiles, 2012.

Notes: These are the WTO-wide average MFN applied tariff rates, and hence do not reflect FTA tariff rates (e.g., the average tariff applied to U.S. exports to Canada and Mexico would be much lower due to NAFTA). \* Signifies data from 2011.

avored nation (MFN) tariff levels for TPP countries vary from 0% to nearly 10% (**Figure 6**). The TPP will include tariff phase-out schedules that cover more than 11,000 commodity categories for each of the partner countries. At their November 2011 meeting in Honolulu, the TPP trade ministers stated that they are aiming for duty-free access for trade in goods. The tariff schedules likely will provide for phase-out of tariffs, with tariffs on many products phased-out immediately when the agreement enters into force, and tariffs on more sensitive products phased out over longer and varying periods of time. All of the current TPP countries are in the process of some tariff elimination as each has an FTA with one or more of the other TPP partners. As mentioned above, the United States has free trade agreements with Australia, Canada, Chile, Mexico, Peru, and Singapore, and the original P-4 countries have already negotiated FTA provisions among themselves. The TPP may build on these previous commitments and harmonize tariff elimination for all members. TPP partners are also discussing provisions that deal with export and import licensing procedures, customs issues, and trade facilitation.

### **Textiles, Apparel, and Footwear**

Differences are likely to arise between the developed countries and some of the developing countries, including Vietnam, over elimination of tariffs on labor-intensive products, such as textiles and apparel and footwear. The United States, for example, has included in its FTAs long tariff phase-out periods, special safeguards, and restrictive rules of origin (see below) to protect U.S. domestic producers from the adverse effects of import-sensitive products. For example, certain U.S. footwear manufacturers have argued for maintaining high tariffs on imported footwear, while some U.S. producers and retailers and Vietnam are pressing for lower tariffs to gain greater access to the U.S. market.<sup>29</sup> Developing countries have argued that they need preferential access to the large markets in order to compete with producers from other countries, such as China.<sup>30</sup>

### **Trade in Services**

A high priority for the United States in its negotiations of bilateral and regional free trade agreements has been increased market access for services providers, especially financial services, including insurance and banking; professional services, including legal services and private educational services; telecommunication services; express delivery; e-commerce and data flows (see e-commerce section below). In doing so, the United States has sought to expand on modest commitments that trade partners have made in the World Trade Organization (WTO) under the General Agreement on Trade in Services (GATS), especially in light of the perceived failure of WTO partners to expand on those commitments in the now dormant Doha Round.

U.S. FTAs with TPP partners Australia, Canada, Chile, Mexico, Peru, and Singapore already cover trade in services. Although these countries cover more than half of U.S.-TPP services trade, Japan is also a major U.S.-services trade partner, so its entry has increased the significance of these provisions. Moreover, innovations regarding trade in services is a key part of the Obama Administration's vision of the TPP as a "21<sup>st</sup> -century model" for trade agreements, and the

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<sup>29</sup> *World Trade Online*, March 5, 2012.

<sup>30</sup> For more information, see CRS Report R42772, *U.S. Textile Manufacturing and the Trans-Pacific Partnership Negotiations*, by Michaela D. Platzer.

United States seeks TPP services provisions to be as broad as possible to cover trade with future entrants.

Restrictions in services trade, like nontariff barriers on goods trade, can take many different forms, making them difficult to quantify and compare across countries. The OECD has created indices that can provide some measure of services trade restrictiveness.<sup>31</sup> These indices, available for OECD countries across 18 different services sectors, suggest that there is considerable variation in services trade restrictiveness among TPP OECD countries (Australia, Canada, Chile, Japan, Mexico, New Zealand, and the United States) and hence opportunity for liberalization through TPP negotiation efforts. For example, in telecommunications, the index, which takes a value from 0 to 1 with a higher number indicating greater restrictiveness, ranging from 0.12 for the United States to 0.30 for Japan and 0.34 for Mexico. Such restrictions are likely even greater among some of the least developed TPP countries not included in the OECD database. Similar work by researchers at the World Bank, which covers more countries at less detail, supports this hypothesis. Their index for overall services trade restrictiveness, which takes a value from 0 to 100, ranges from 11 for New Zealand to 41.5 for Vietnam and 46.1 for Malaysia, although Peru (16.4) scores even lower than the United States (17.7).<sup>32</sup>

According to the agreed outline, the TPP will cover services trade in several separate chapters, with some overlap. The section on cross-border trade in services—in which the buyer and seller are located in different territories—will employ the “negative list approach” (as did the P-4 agreement), that is, the provisions are to apply to all types of services unless specifically excluded by a partner country in an annex to the agreement. This approach is generally considered to be more comprehensive than the “positive list approach” used in the WTO General Agreement on Trade in Services (GATS) that requires each covered service to be identified. The negative approach also implies that any new type of service that is developed after the agreement enters into force is automatically covered unless it is specifically excluded.

Most trade agreements on cross-border services trade, including U.S. FTAs and the original P-4 agreement, contain basic provisions on services that will likely be part of the TPP:

- nondiscriminatory treatment of services from partner-country providers, including national treatment and most-favored-nation treatment;
- market access—no limitations on the number of service suppliers, the total value or volume of services provided, the number of persons employed, or the types of legal entities or joint ventures that a foreign service supplier may employ;
- prohibition on requirements that a partner-based service provider maintain a commercial presence in the country of the buyer;
- mutual recognition of professional qualifications for certification of service providers;
- transparency in the development and application of government regulations; and

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<sup>31</sup> OECD Services Trade Restrictiveness Index available at <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>.

<sup>32</sup> Ingo Borchert, Batshur Gootiiz, and Aaditya Mattoo, *Policy Barriers to International Trade in Services: New Empirical Evidence*, World Bank Policy Research Working Paper (WPS6109), 2012, <http://iresearch.worldbank.org/servicetrade/home.htm>.

- allowance for payments and transfers of capital flows in the provision of services.

In recent FTAs, including KORUS FTA, the United States has made market access of *express delivery services* a priority, which could also be the case in its negotiations on the TPP. Of particular concern are cases where a government-owned and operated postal system provides express delivery services competing with private sector providers. The KORUS FTA (Annex-12-B) stipulates that the postal system cannot use its monopoly power in providing postal services to give an express delivery subsidiary an unfair advantage. Nor should it divert revenues from its postal services to subsidize its express delivery services to the disadvantage of other providers.

In addition, other chapters in the proposed agreement would affect trade in services because of the nature of services and their modes of delivery. Most services require the provider and buyer to be co-located, and the largest volume of services trade occurs when the provider has a commercial presence in the form of a direct investment in the country of the buyer and sells the service to the buyer. Therefore, provisions of the TPP that may pertain to foreign investments (discussed elsewhere) relate to trade in services. In addition, many service providers, such as sellers of entertainment programming, are intellectual property owners and argue for strong IP rights protection, the subject of another chapter in the proposed TPP (and discussed elsewhere). Often, businesses rely on cross-border transmission of data and the ability to transfer that data with a minimum of restrictions is also being considered elsewhere in the agreement. Furthermore, most of the barriers to trade in services are in the form of domestic regulations; therefore, the cross-cutting objective for regulatory coherence could affect trade in services.

According to the November 2011 outline, as in previous U.S. FTAs, the TPP will have a separate chapter on telecommunications trade. The TPP is to promote access to telecommunications networks for foreign services suppliers and transparency of regulations pertaining to telecommunications services. Along with these objectives, the United States sought and obtained in the KORUS FTA commitments to allow U.S. investment in foreign telecommunications companies.

Negotiations over the services provisions may lead to controversy between the developed countries, including the United States, Australia, Canada, Japan, New Zealand, and Singapore, and developing countries. Developed countries have pushed for greater market access for services. Developing countries have been more cautious on liberalization in services trade as they fear competition in sectors they view as a source of domestic employment and worry about the political implications of forcing open sectors that are often controlled by politically powerful interests. Also, the United States may be challenged to open its market to providers of maritime services. The United States has also been pressed to liberalize access to its market through the so-called GATS mode-4 delivery—temporary entry of business personnel to provide services. No U.S. FTA negotiated after the agreements with Chile and Singapore agreements includes provisions on the temporary movement of personnel.

### ***Financial Services***

The draft TPP outline indicates that financial services, including insurance and insurance-related services, banking and related services, as well as auxiliary services of a financial nature, will be addressed in a separate chapter as in previous FTAs. The original P-4 agreement did not include financial services provisions when it came into force in 2006. However, the P-4 partners committed to concluding a financial services (and investment) chapter within two years—a

commitment that was overtaken by the launch of the TPP. The financial services chapter would adapt relevant provisions from the foreign investment chapter and the cross-border trade in services chapter. The KORUS FTA was the most recent U.S. FTA in which the United States negotiated provisions on financial services and which presumably will serve as a model for U.S. negotiations of the TPP in this area. The KORUS FTA distinguishes between financial services traded across borders and those sold by a provider with a commercial presence in the home country of the buyer. In the case of providers with a foreign commercial presence, the KORUS FTA applies the negative list approach; in the case of cross-border trade, the KORUS FTA limits coverage to specific banking and insurance services.<sup>33</sup>

The KORUS FTA and other U.S. FTAs provide that nothing in the FTA would prevent a party to the agreement from imposing prudential measures to ensure the integrity and stability of the financial system. The KORUS FTA also addresses insurance sold by Korea Post, in particular that Korea Post is not regulated as other financial institutions. U.S. providers have argued that government-owned and operated insurance providers are not regulated as stringently and therefore, have a competitive advantage over their privately owned counterparts. The KORUS FTA stipulates Korea Post insurance operations would be subject to tighter regulation. Another issue of U.S. concern regarding financial services was assurances that a U.S. financial service provider located in South Korea would be able to transfer information electronically or by other means from the host country where it is required in the ordinary course of business. Such information could include accounting information and human resources information that a company would want to transfer and process to a central location rather than having to process and keep at individual locations. Host governments are cautious that such transfers of information might violate domestic privacy laws and considerations.

## **Government Procurement**

The United States is a member of the plurilateral WTO Government Procurement Agreement (GPA) and has sought the inclusion of government procurement provisions in its FTAs. Among TPP partner countries, only Japan and Singapore are members of the GPA, although New Zealand announced on August 15, 2012, that it will seek to join the agreement.<sup>34</sup> In previous FTA negotiations with Malaysia, the United States had sought concessions on government procurement, a sensitive area for Malaysia which since 1969 has maintained preferences designed to assist the ethnic Malay population. All U.S. FTAs—including those with TPP partners Australia, Peru, Chile, Singapore, and NAFTA—include chapters on government procurement. Nearly identical to U.S. obligations in the GPA, although with different schedules of commitments for various government agencies, the FTA obligations provide opportunities for firms of each nation to bid on certain federal and state contracts over a set monetary threshold on a reciprocal basis. A similar chapter has been proposed by U.S. negotiators in the TPP talks.

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<sup>33</sup> Regarding insurance, the FTA's coverage would be limited to cross-border trade in marine, aviation, and transit insurance; reinsurance; services auxiliary to insurance, such as consultancy, risk assessment, and actuarial and claim settlement services; and insurance intermediation services such as brokerage and agency services. Regarding banking and securities, the agreement's coverage in cross-border trade would be limited to providing financial information and data processing, advisory, and other auxiliary financial services.

<sup>34</sup> "Press Release: NZ to Join WTO's Government Procurement Agreement," August, 15, 2012, <http://www.beehive.govt.nz/release/nz-join-wto%E2%80%99s-govt-procurement-agreement>.

On July 30, 2014, 123 Members of Congress wrote to President Obama to urge the Administration not to negotiate government procurement provisions that would limit the application of Buy American provisions through extension of government procurement opportunities and obligations to TPP partner countries.<sup>35</sup> Supporters of expanded procurement opportunities argue that the reciprocal nature of the government procurement provisions will allow U.S. firms access to major government procurement market opportunities overseas. This market potentially could be quite large. According to the WTO, government procurement accounts for 15%-20% of a country's GDP, and the size of the government procurement market among GPA members was \$1.6 trillion in 2008.<sup>36</sup>

The United States has indicated that it is not seeking to cover state or local procurement in the TPP negotiations. This may be due to resistance among some U.S. states in providing access to their procurement markets. States must voluntarily opt in to government procurement commitments in FTAs, but the number of states doing so has dropped substantially from the 37 states that signed up to the GPA to 8 states that have acceded to commitments under the most recent U.S. bilateral FTAs with South Korea, Panama, and Colombia. However, Canada reportedly is seeking to address remaining U.S. Buy American exclusions concerning state and municipal projects funded by the federal government by proposing to obligate sub-federal entities to open procurement projects funded by a central government to competition from firms in TPP countries.<sup>37</sup>

## **Agriculture**

Negotiating the terms of agricultural trade liberalization within the context of what trade negotiators have billed as a high-standard trade agreement for the 21<sup>st</sup> century continues to be central to efforts to fashion an overall TPP agreement. Within this process, bilateral negotiations between the United States and Japan that seek to come to terms on market access for a handful of key agricultural commodities that Japan considers to be sensitive and in need of continued import protection have emerged as a key sticking point. While other agricultural issues remain on the table (discussed below), the market access issues with Japan appear to be a crucial stepping stone for substantially concluding the agricultural dimension of an agreement which, in turn, could help to clear the pathway for moving the broader TPP negotiations toward an end point.

## **Market Access**

U.S. agriculture has both offensive and defensive interests in the TPP negotiations. Many in the U.S. agriculture and the agribusiness/food manufacturing sectors view positively the prospect of market openings in the three most commercially significant countries with which the United States does not yet have an FTA (i.e., Japan, Malaysia, and Vietnam). On the defensive side of the

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<sup>35</sup> Letter available at [http://donnaedwards.house.gov/index.php?option=com\\_content&view=article&id=657:edwards-delauro-lead-121-members-of-congress-to-urge-president-obama-to-protect-buy-american-policies-in-tpp&catid=10:press-releases&Itemid=18](http://donnaedwards.house.gov/index.php?option=com_content&view=article&id=657:edwards-delauro-lead-121-members-of-congress-to-urge-president-obama-to-protect-buy-american-policies-in-tpp&catid=10:press-releases&Itemid=18).

<sup>36</sup> Briefing Note: Government Procurement Agreement, [http://www.wto.org/english/thewto\\_e/minist\\_e/min11\\_e/brief\\_gpa\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min11_e/brief_gpa_e.htm).

<sup>37</sup> "Canada to Push Opening U.S. Government Procurement Contracts at TPP, Source, *Wall Street Journal*, February 21, 2013.

ledger, the U.S. sugar industry is opposed to providing additional access to the U.S. sugar market, while the U.S. dairy industry has both offensive and defensive interests.

In negotiating expanded market access, the TPP countries have engaged in a process where offers are exchanged with each other and then responded to with requests to improve the offer. To date, USTR has engaged in a separate offer/request process with each of the five countries that the United States does not yet have a bilateral FTA—Brunei, Japan, Malaysia, New Zealand, and Vietnam. This process has not yet occurred with Canada on products not fully liberalized under the Canada-U.S. FTA. As concerns other countries with which the United States has an FTA, the U.S. position is that it will not engage in talks to reopen any existing market access provision.

### ***U.S.-Japan Negotiations a Bellwether***

Japan—currently the fourth largest market for U.S. agricultural exports—is generally considered to be the most promising market within the TPP group for U.S. agriculture. But realizing this potential is contingent upon Japan either dismantling, or substantially rolling back, the high tariffs and restrictive quotas that surround its most sensitive commodities. These measures protect Japanese producers of pork, beef, rice, wheat, barley, dairy products, and sugar by discouraging imports. Of these, beef, pork and dairy appear to rank as the top priorities for the market-opening efforts of U.S. negotiators.

The offers that Japan has tabled with respect to relaxing access to its market for these sensitive commodities have not been made public. But numerous Members of Congress, and some commodity groups, have expressed concern that Japan’s offers of concession to date have fallen well short of what would be required, in terms of cutting tariff rates and removing other restrictions on imported products, to gain congressional support for an agreement.

On July 30, 2014, 140 Members of the House of Representatives signed a letter to President Obama expressing “deep concern over Japan’s current market access offer” in the TPP negotiations.<sup>38</sup> The letter characterizes Japan’s effort to exempt numerous tariff lines from complete elimination as “objectionable,” adding that it “falls far short of acceptability.” It goes on to assert that if accepted Japan’s offer could compromise the U.S. negotiating position with future TPP members and undermine congressional support for any such agreement. Among the signatories to the letter were the respective Chairmen of the Ways and Means Committee, Representative Dave Camp, and of the Agriculture Committee, Representative Frank D. Lucas.

Similarly, in early September 2014 the National Pork Producers Council, along with trade organizations representing hog producers in Australia, Chile, and Mexico issued an open letter to TPP negotiators wherein they referenced Japanese restrictions on trade in pork and called for an agreement “in which full tariff elimination is achieved for virtually all products, including pork.”<sup>39</sup> The letter cites “Reports that Japan has made unacceptable tariff offers in each of the agricultural sectors it considers sensitive, including pork.” It concludes that if Japan will not fully open these markets, then Japan should withdraw from the negotiations.

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<sup>38</sup> See [http://waysandmeans.house.gov/uploadedfiles/tpp\\_market\\_access\\_letter.pdf](http://waysandmeans.house.gov/uploadedfiles/tpp_market_access_letter.pdf).

<sup>39</sup> See “Top Pork Producers Want Tariffs Eliminated in TPP”, Sept. 8, 2014, at <http://www.nppc.org/2014/09/top-pork-countries-want-tariffs-eliminated-in-tpp/>.

Japan's largest agricultural lobby, which exercises considerable political influence, has called on its government to reject efforts to open its sensitive agricultural commodities to any additional imports. Some close observers of Japanese politics have asserted that Prime Minister Shinzo Abe is not likely to make substantial concessions on these sensitive agricultural commodities until after important local and regional elections take place in April 2015 at the earliest.<sup>40</sup>

The near-term prospects for the United States and Japan to come to terms over market access in agricultural trade appeared to be more uncertain than ever following two days of talks on Sept. 23-24, 2014 between USTR Michael Froman and Japan's chief TPP negotiator Akira Amari. Upon conclusion of the talks, both sides cited a lack of progress toward resolving outstanding differences over trade in agricultural products.<sup>41</sup> A further bilateral meeting between U.S. and Japanese negotiators ending October 15, reportedly made progress, but negotiators highlighted the difficulty of the issues they continue to face.<sup>42</sup>

### *Access Issues Extend Beyond Japan*

In an indication that concern about expanding market access for U.S. agricultural products in a TPP agreement is not limited to Japan alone, signatories to the House letter of July 30 (see above) added that they are "troubled by Canada's lack of ambition, which is threatening a robust outcome for U.S. farmers." The reference appeared to be aimed at the import protections Canada maintains to shield its poultry, egg, and dairy industries from foreign products, which it believes could undermine the supply management regimes that support prices for these commodities. To underscore the point, the House letter urges the President to pursue TPP negotiations without Japan, Canada or any other country that fails to open its markets in line with the high standards envisaged for the TPP.

The market access issue with Canada is one that could well move to the negotiating forefront at a later date, depending on the outcome of the agricultural market access negotiations between the United States and Japan. An agreement with Japan that provides for substantially improved access to markets for its sensitive commodities would likely create strong pressure to achieve a similar outcome with Canada. Under such circumstances Canada might, in turn, seek greater access to U.S. markets for selected commodities, such as sugar, sugar-containing products, peanuts, and dairy products among others.

A tentative meeting of TPP chief negotiators in Australia around mid-October 2014, followed by a possible meeting of trade ministers from TPP countries later that month may provide the next opportunity to narrow the differences on outstanding issues and to gain additional visibility concerning overall progress. How many issues remain to be resolved and how much time that may require are open questions. In a mid-September 2014 report and speech to the Council on Foreign Relations, the ranking Member of the House Ways and Means Committee, Representative Sander Levin, asserted that numerous important and difficult trade matters remain

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<sup>40</sup> "TPP Countries Firming Up Plans for Mid-October Meetings in Australia", *Inside U.S. Trade*, Sept. 18, 2014.

<sup>41</sup> See "Readout of Meeting Between US Trade Representative Michael Froman and Japanese Minister for Economic and Fiscal Policy Akira Amari", Sept. 24, 2014, at <http://www.ustr.gov/about-us/press-office/press-releases/2014/September/Readout-of-Meeting-between-USTR-Froman-and-Japanese-Minister-Amari>; also, Reuters, Sept. 24, 2014, at <http://www.reuters.com/article/2014/09/25/us-japan-trade-usa-idUSKCN0HJ2GV20140925>.

<sup>42</sup> "U.S.-Japan TPP Deal Elusive as Tokyo Meeting Ends; Talks to Resume in Australia," *World Trade Online*, October 15, 2014, Daily News.

to be resolved. Moreover, he concluded that achieving an agreement in one area — be it in autos or agriculture—would not, in itself, unlock the door to an overall agreement. Among a plethora of issues still to be resolved, Representative Levin cited achieving greater access for U.S. agricultural products to markets in Japan and Canada, noting in particular that Japan is seeking to carve out an unprecedented number of agricultural products from tariff elimination.<sup>43</sup>

### ***U.S. Sugar and Dairy Interests and the TPP***

Dairy and sugar are among the most significant of the sensitive U.S. agricultural commodities. Although U.S. agricultural groups generally have pressed for the complete elimination of all tariffs and other restrictions on market access for agricultural products imported by other TPP countries, not all food and commodity groups support this approach.

The U.S. dairy sector has adopted a multi-pronged posture toward TPP. The dairy industry, as represented by the National Milk Producers Federation and the U.S. Dairy Export Council, have expressed support for efforts to gain greater access to certain dairy product markets within the TPP, particularly Canada and Japan, as well as Malaysia and Vietnam. At the same time, the U.S. dairy industry has been wary of facing an increased level of competition in the U.S. market and in other TPP markets from New Zealand as a result of a TPP agreement. The U.S. industry contends that the high level of milk market concentration that Fonterra, New Zealand's largest dairy exporter, enjoys in that country as a result of past government policies provides Fonterra with an unfair advantage in export markets. U.S. dairy interests further assert that this situation should be addressed before a TPP agreement involving New Zealand's dairy industry is concluded. The New Zealand government has countered that its dairy industry, including Fonterra, operates within a strong competition policy framework and under the purview of an active competition regulator.

The U.S. sugar production sector, as represented by the American Sugar Alliance, opposes opening the U.S. sugar market to any additional imports from the TPP region. But the Sweetener Users Association, representing candy makers and other sugar-consuming industries, have argued that any TPP agreement should provide for immediate, new access to the U.S. market for foreign sugar, while also establishing a glide path to trade liberalization for all sugar-producing TPP partners. They argue the increased competition would benefit both sugar-consuming businesses and consumers. To this end, it remains to be seen whether Australia, a major sugar producer, will use the TPP negotiations to press for access to the U.S. sugar market, perhaps in return for engaging in priority issues for the United States, such as e-commerce, investor-state dispute settlement, and state-owned enterprises.

### **Agricultural Issues in Other TPP Chapters**

In the rules portion of the TPP, negotiators are seeking to better address disputes that can arise over differences on how to handle human health and animal/plant safety issues (i.e., sanitary and phytosanitary standards (SPS)) associated with trade in agricultural products, and the possible ramifications of regulating the sale of some tobacco products on trade in tobacco. The

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<sup>43</sup> See "A Conversation with Sander Levin," Sept. 18, 2014, at <http://www.cfr.org/trade/conversation-representative-sander-levin/p33472>. See also "A Report to the Council on Foreign Relations" at <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Levin%20Report%20to%20CFR%20on%20TPP.pdf>.

“Intellectual Property Rights” chapter could include provisions to prescribe how agricultural products with a “geographical indications” designation are to be treated. The “Competition” chapter could address objectives sought by Australia and New Zealand to secure disciplines on TPP countries’ use of export subsidies, export credits, and food aid to promote their farm sectors.

### ***Sanitary and Phytosanitary Standards***

As part of the effort to make the TPP a 21<sup>st</sup>-century agreement, while boosting U.S. agricultural exports beyond what U.S. negotiators might secure in market access talks alone, negotiators are drafting a chapter on sanitary and phytosanitary (SPS) matters that lays out commitments relating to human health and animal/plant safety which would go beyond those found in the World Trade Organization’s (WTO) SPS Agreement.<sup>44</sup>

The major issue on which strong differences still exist is over what approach should be included to resolve SPS disagreements that arise among TPP members. USTR has tabled text that would establish both a “consultative mechanism” among technical experts to address SPS disputes that arise, and a “rapid-response mechanism” designed to quickly resolve SPS barriers that block shipments of perishable products. Other TPP countries that are significant agricultural exporters appear to favor a dispute settlement process for SPS obligations.<sup>45</sup> At the Ottawa round in July 2014, USTR reportedly indicated it would accept dispute settlement for some SPS obligations, but not for all. Unclear was what type of dispute settlement mechanism would be acceptable and which SPS obligations the United States would agree to subject to this procedure.<sup>46</sup>

U.S. agricultural interests and food groups support the inclusion of an enforcement mechanism for SPS disputes in the TPP text. This support is reflective of a letter from 24 Members of Congress that called for the inclusion of “effective and enforceable rules” to strengthen the role of science in resolving differences.<sup>47</sup> Another dimension of the congressional perspective on SPS enforcement is expressed in Representative Levin’s report to the Council on Foreign Relations. In that report Representative Levin cautioned that any new SPS disciplines under TPP must not place U.S. regulatory sovereignty at risk in view of the broad array of conditions that exist across TPP countries.<sup>48</sup>

### ***Tobacco***

On the matter of controlling tobacco use, the U.S. position as articulated by USTR has drawn criticism from a number of quarters for being inadequate to protect public health, while others have argued that tobacco products are uniquely harmful and should be excluded from trade

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<sup>44</sup> For background on SPS issues see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

<sup>45</sup> “New U.S. SPS Text Includes Consultative Mechanism, RRM Provisions,” *Inside U.S. Trade*, May 24, 2013; “Food, Agriculture Groups Blast U.S. Approach to SPS Disputes in TPP,” *Inside U.S. Trade*, May 10, 2013.

<sup>46</sup> “TPP Chief Negotiators Narrow Differences on Handling of SPS Disputes,” *Inside U.S. Trade*, July 10, 2014.

<sup>47</sup> Letter to USTR Ron Kirk from Members of the House Agriculture and Ways and Means Committees, August 3, 2012; “TPP’s Biggest Benefit for Agriculture is Binding SPS Rules, Stallman Says,” *Inside U.S. Trade*, November 16, 2012.

<sup>48</sup> See A Report to the Council on Foreign Relations by Congressman Sander Levin at <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Levin%20Report%20to%20CFR%20on%20TPP.pdf>.

liberalization altogether. USTR's August 2013 proposal for tobacco products clarifies that TPP countries agree that exceptions allowed under the two multilateral trade agreements (i.e., Article XX(b) of the General Agreement on Tariffs and Trade (GATT) and Article XVI of the General Agreement on Trade in Services (GATS)), which allow for measures that are necessary to protect human, animal or plant life or health, would not violate the agreements if the measure is not a disguised trade barrier. The proposal would require a TPP signatory to consult with its TPP partners before bringing a legal challenge under any tobacco control measures agreed upon in a TPP text.<sup>49</sup> Malaysia has countered with a proposal that would exempt tobacco-control measures from being challenged under TPP.

USTR's proposal has been criticized by some Members of Congress, by a number of tobacco control groups, and by attorneys general from 45 states and territories. In a letter to President Obama of October 30, 2013, 56 Members of the House asserted that USTR's August proposal would likely lead to greater use of tobacco products in developing countries.<sup>50</sup> A November 12, 2013 letter from 12 Senators to USTR Ambassador Michael Froman expressed concern that USTR's TPP proposal could allow tobacco companies to use trade law to undermine domestic tobacco control measures, and advocated excluding tobacco products from TPP.<sup>51</sup> Five U.S. tobacco control groups lamented that USTR retreated from its earlier proposal that would have made it more difficult for tobacco companies to challenge domestic tobacco control measures under trade agreements. They noted that USTR's August 2013 proposal fails to recognize tobacco as a "uniquely harmful product," while also pointing out that it would not cover lawsuits filed by tobacco firms, and would not provide countries that have strong control measures with the protections needed to rebuff challenges by the industry.<sup>52</sup> The 45 attorneys general issued a letter to USTR in January 2014, expressing concern that TPP could pose a threat to state and local regulation of tobacco products, and urging USTR to exclude tobacco products from TPP.<sup>53</sup>

At the same time, a number of U.S. business associations and food and agriculture organizations have taken a stand against any effort to exclude tobacco product manufacturers from investor-state dispute settlement provisions in a TPP agreement. In a letter of Oct. 21, 2014 to Japan's ambassador to the United States, the U.S. Chamber of Commerce, the National Association of Manufacturers, the American Farm Bureau Federation, the American Meat Institute, and others, asserted that excluding any sector from the basic rules of investment agreements would undermine the investment trade and rules-based system, and would carry with it a number of negative consequences.<sup>54</sup> Senator Mitch McConnell has expressed to USTR Michael Froman his

<sup>49</sup> "USTR Prepares To Table Revised TPP Tobacco Proposal, Briefs Congress," *Inside U.S. Trade*, August 16, 2013; USTR, "Fact Sheet: New U.S. Proposal on Tobacco Regulation in the Trans-Pacific Partnership," August 21, 2013, <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/august/fact-sheet-tobacco-and-tp>.

<sup>50</sup> "Reps. Waxman, Doggett, Capps, and over 50 Members Urge Administration to Strengthen Tobacco Proposal for Trans-Pacific Partnership Agreement", Oct. 30, 2013, at <http://waxman.house.gov/press-release/reps-waxman-doggett-capps-and-over-50-members-urge-administration-strengthen-tobacco>.

<sup>51</sup> "Blumenthal, Murphy Urge USTR to Safeguard Tobacco Control Measures and Protect Public Health in Trade Agreement", Nov. 14, 2013, at <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-murphy-urge-ustr-to-safeguard-tobacco-control-measures-and-protect-public-health-in-trade-agreement>.

<sup>52</sup> Statement of Campaign for Tobacco-Free Kids, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association and American Academy of Pediatrics, "USTR Abandons Plan to Protect Tobacco Control Measures under Trans-Pacific Partnership Trade Agreement," August 19, 2013, [http://www.tobaccofreekids.org/press\\_releases/post/2013\\_08\\_19\\_trade](http://www.tobaccofreekids.org/press_releases/post/2013_08_19_trade).

<sup>53</sup> "U.S. Trade Agreement Should Not Apply to Tobacco", Jan. 27, 2014, at <http://www.naag.org/u.s.-trade-agreements-should-not-apply-to-tobacco1.php>.

<sup>54</sup> Letter Ambassador Kenichiro Sasae of Japan, Oct. 21, 2014, at (continued...)

concern over any effort to exclude tobacco products from investor-state dispute settlement provisions within TPP.<sup>55</sup> Senator Kay Hagan also has expressed her view that the tobacco industry should be treated no differently than other agricultural product industries.<sup>56</sup>

### ***Geographical Indications***

Another agricultural trade issue that has surfaced in the TPP negotiations concerns the use of geographical indications (GIs). GIs apply primarily to agricultural products, including cheese, wines, and spirits. Examples of GIs are Roquefort cheese, Idaho potatoes, Champagne, and Tuscan olive oil.<sup>57</sup> The WTO's intellectual property rights agreement and related provisions in the FTAs negotiated by the United States recognize the use of geographical indications to protect the quality and reputation of a distinctive product produced in a particular region of a country. The U.S. dairy industry, though, is concerned that GI protections which the European Union (EU) has accorded to cheese names that U.S. manufacturers consider to be common names, such as parmesan and asiago, could impede their access to export markets.

The U.S. dairy industry wants safeguards included in TPP to ensure that exports of cheeses using common food names, like parmesan, feta and romano, will not be blocked as a result of bilateral FTAs that TPP member states negotiate with the EU.<sup>58</sup> This arises from the GI provision in the EU-South Korea FTA (KOREU), and in the EU-Canada FTA which is pending ratification. The U.S. dairy industry argues the GI provisions in these agreements have, and will, limit U.S. exports to these markets.<sup>59</sup> An open question is how the TPP will treat this matter for countries that have an existing FTA with the EU that provides for recognition of such GI-restricted products.

### ***Agricultural Competition***

One of Australia's TPP negotiating objectives, supported by New Zealand, is to secure disciplines on other TPP countries' use of export subsidies, official export credits, and food aid in support of their agricultural sectors. Its negotiators have argued for years in the multilateral Doha Round that these programmatic tools distort agricultural trade and should be modified when negotiating trade agreements in order to minimize such impacts. The United States has eliminated the use of export subsidies for agricultural products and, in recent years, has significantly reformed its use of

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(...continued)

[https://www.politicopro.com/images/pdf/letter\\_to\\_ambassador\\_kenichiro\\_sasae.pdf](https://www.politicopro.com/images/pdf/letter_to_ambassador_kenichiro_sasae.pdf).

<sup>55</sup> The Hill, "McConnell seeks to protect tobacco industry in trade deal," Oct. 19, 2014, at <http://thehill.com/policy/finance/221197-mcconnell-seeks-to-protect-tobacco-industry-in-trade-deal>.

<sup>56</sup> Letter to USTR nominee Michael Froman, June 11, 2013, at <http://www.hagan.senate.gov/files/documents/HaganFromanLetter.pdf>.

<sup>57</sup> For more information on GIs, see CRS In Focus, *Geographic Indications in the U.S.-EU Trade Negotiations*, by *Renée Johnson*.

<sup>58</sup> For more on the U.S. dairy industry position on the TPP see [http://usdec.files.cms-plus.com/PDFs/TradePolicy/Dairy%20TPP%20Backgrounder\\_0713.pdf](http://usdec.files.cms-plus.com/PDFs/TradePolicy/Dairy%20TPP%20Backgrounder_0713.pdf).

<sup>59</sup> For more detail see testimony of the U.S. Dairy Export Council & National Milk Producers Federation to the U.S. Senate Finance Committee Subcommittee on International Trade, Customs and Global Competitiveness, Pages 3-5, July 29, 2014, at [http://www.finance.senate.gov/imo/media/doc/Testimony%20to%20Senate%20Trade%20Subcommittee%20on%20Korus\\_July%2029%2014\\_FINAL.pdf](http://www.finance.senate.gov/imo/media/doc/Testimony%20to%20Senate%20Trade%20Subcommittee%20on%20Korus_July%2029%2014_FINAL.pdf).

export credit guarantees. The United States has signaled its opposition to any effort to include food aid disciplines in the TPP, contending that such rules should be developed on a multilateral basis.<sup>60</sup>

Some observers have suggested that Australia's insistence on the inclusion of issues relating to agricultural export competition is part of a strategy to engineer a compromise which would include the United States addressing Australia's other priorities, such as obtaining additional access to the U.S. market for Australia's sugar and dairy products, and securing an exclusion for Australia from TPP's final investor-state dispute settlement mechanism.<sup>61</sup>

### **"The May 10<sup>th</sup> Agreement"**

On May 10, 2007, a bipartisan group of congressional leaders and the Bush Administration released a statement on agreed principles in four policy areas: worker rights, environment protection, intellectual property rights, and foreign investment. The principles were to be reflected in provisions in four U.S. FTAs—with Colombia, Panama, Peru, and South Korea. Regarding worker rights, the May 10<sup>th</sup> Agreement (the Agreement) required the United States and FTA partners to commit to enforcing the five international labor principles enshrined in International Labour Organization's (ILO's) 1998 Declaration on Fundamental Principles and Rights At Work and that the commitment be enforceable under the FTA. These rights are the freedom of association, the effective recognition of the right to collective bargaining, the elimination of all forms of compulsory or forced labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation.

The Agreement also required FTAs to adhere to seven major multilateral environmental agreements: The seven agreements are the Convention on International Trade in Endangered Species; the Montreal Protocol on Ozone Depleting Substances; the Convention on Marine Pollution; the Inter-American Tropical Tuna Convention; the Ramsar Convention on the Wetlands; the International Convention for the Regulation of Whaling; and the Convention on Conservation of Antarctic Marine Living Resources.

Furthermore, the parties are not to waive or otherwise derogate from their labor or environmental protection laws in a manner that would affect trade or investment with the FTA partner(s). In addition, the labor and environment provisions must be enforceable, if consultation and other avenues fail, through the same dispute settlement procedures that apply to the other provisions in the FTA.

The Agreement also required the FTAs to include provisions related to patents and approval of pharmaceuticals for marketing exclusivity with different requirements for developed and developing countries. Specifically, the Agreement requires provisions dealing with the effective period of data exclusivity—the restrictions on the use of test data produced for market approval by generic drug producers; patent extensions; linkage of marketing approval of generic drugs to determination of possible patent infringement; and reaffirmation of adherence to Doha Declaration on compulsory licensing of drugs to respond to public health crises.

Regarding foreign investment, the Agreement required each of the FTAs to state that none of its provisions would accord foreign investors greater substantive rights in terms of foreign investment protection than are accorded U.S. investors in the United States.

## **Core Negotiating Issues: Rules**

In addition to market access, the TPP contains several provisions that build upon rules and disciplines contained in the World Trade Organization's Uruguay Round agreements. Many of these provisions have become part of the standard template for U.S. FTAs. The chief U.S. negotiator on the TPP, Assistant USTR Barbara Weisel, reportedly indicated that the current TPP participants are open to allowing developing countries in the TPP to have longer phase-in periods

<sup>60</sup> "USTR Says It Will Oppose Inclusion of Food Aid Disciplines In TPP Talks," *Inside U.S. Trade*, December 7, 2012, pp. 10-11.

<sup>61</sup> *Inside U.S. Trade*, "Australian Opposition on Key U.S. Priorities Emerges as Hurdle in TPP," September 21, 2012.

for rules-based commitments. She stated that those countries would eventually have to adhere to all of the obligations of the agreement.<sup>62</sup>

## **Intellectual Property Rights (IPR)**

The United States has sought increased intellectual property rights (IPR) protection in its FTAs. IPR negotiating objectives in the last U.S. Trade Promotion Authority (TPA) (P.L. 107-210) in effect between 2002 and 2007 included, among others: (1) the application of existing IPR protection to digital media; and (2) negotiation of trade agreements in terms of IPR that “reflect a standard of protection similar to that found in U.S. law.” This phrase opened the door to the negotiation of provisions that go beyond the level of protection provided in the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, including with the current TPP negotiations. For example, the United States has sought to have its partner countries sign the World Intellectual Property Organization’s (WIPO’s) Performances and Phonograms Treaty, an agreement to which Brunei, New Zealand, and Vietnam are not parties. These provisions from the last TPA are included in the objectives in the Baucus/Hatch/Camp 2014 TPA proposal (H.R. 3830/S. 1900).<sup>63</sup>

## *Copyright*

The United States traditionally has favored strong copyright provisions in its FTAs, of importance to industries such as books, movies, and music that rely on IPR. In some areas, notably the relationship between copyright and the Internet, different domestic constituencies have sought to influence the U.S. negotiating position. Some copyright provisions that the United States has sought in its recent FTAs include:

- extending the copyright term to no less than 70 years from death of the author or authorized publication from no less than 50 years currently. For works not attributed to an author the term would be 95 years.;
- prohibiting the removal or alteration of digital rights management;
- prohibiting the circumvention of copyrighted work;
- providing limited liability for Internet service providers (ISP) for certain copyright infringement (see below).

U.S. stakeholders have held divergent views relating to copyright enforcement and the Internet, with views differing especially between ISPs and traditional content providers. Internet providers and other activists are seeking to provide a more explicit balance in the agreement text between the rights of content providers and users of copyright material, while content providers have favored strong ISP liability provisions for effective copyright enforcement. The United States reportedly proposed language to place certain limitations on copyrights consistent with the so-called “three-step test”: that the exception (1) is consistent with domestic copyright law; (2) does not conflict with the normal exploitation of the work; and (3) does not unreasonably prejudice the

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<sup>62</sup> *World Trade Online*, July 4, 2012.

<sup>63</sup> See text box, above Trade Promotion Authority.

interest of the rights holder. The proposal also reportedly obligates each country to provide for such exceptions in their domestic copyright laws.<sup>64</sup>

The United States reportedly favors criminal penalties for “willful” trademark infringement, counterfeiting, and copyright piracy on a “commercial scale.” Commercial scale includes acts that result in no direct or financial gain, such as file sharing. It would also require criminal penalties for importing counterfeit labeling and packaging whether done willfully or not, and it would require criminal penalties for cam-cording in movie theatres.

Some countries, notably Australia, New Zealand, and Singapore, reportedly have sought to replace U.S. text on criminal enforcement with that of the Anti-Counterfeiting Trade Agreement (ACTA).<sup>65</sup> Although both ACTA and the U.S. proposal for the TPP, which largely track the IPR provisions in the U.S.-Korea FTA, provide stricter criminal enforcement measures than the WTO TRIPS Agreement, ACTA provides greater flexibility than what is reportedly contained in U.S. proposals regarding a country’s enforcement of IPR. For example, in ACTA, financial gain is necessary to be considered commercial scale for prosecution, and willfulness is required for importation of trademark infringing goods.

### *Patents*

The scope of patentability has become an issue in the IPR negotiations. U.S. FTAs generally have followed the TRIPS Agreement, which makes patents available “for any invention, whether product or processes, in all fields of technology, provided that they are new, involve and inventive step, and are capable of industrial application.” However, in the TPP negotiations, the United States reportedly has also sought the ability to patent:

- Plants and animals;
- Diagnostic, therapeutic, or surgical methods if they cover a method of using a machine, manufacture, or composition of material; and
- New forms, uses or methods of an existing product without enhanced efficacy.

These provisions did not appear in the U.S.-Korea FTA. Critics assert that the last point encourages the practice of “evergreening,” a practice whereby a manufacturer allegedly would make minor modifications to an existing product to extend its patent, thus delaying the introduction of generic equivalents. Manufacturers contend that new versions of their product represent more potent, longer-lasting formulations or improved delivery systems that make taking the drug easier or more convenient.<sup>66</sup>

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<sup>64</sup> “U.S. Tables New Proposal in TPP Outlining Broad Copyright Exceptions,” *Inside U.S. Trade*, July 6, 2012.

<sup>65</sup> “Countries Offer ACTA Language to Replace U.S. IPR Proposal,” *Inside U.S. Trade*, May 14, 2012; for more information on ACTA, see CRS Report R41107, *The Proposed Anti-Counterfeiting Trade Agreement: Background and Key Issues*, by Shayerah Ilias Akhtar.

<sup>66</sup> “Evolving Patent Issues and the Trans-Pacific Partnership,” by Krista Cox, October 15, 2013, Knowledge Economy International <http://keionline.org/node/1813>; “U.S. TPP Proposal Broadens Patent Rights, But Secondary Liability Unclear,” *Inside U.S. Trade*, March 18, 2011.

## Access to Medicines

The debate over patent provisions in the TPP also relate to pharmaceuticals and access to medicines, one of the more controversial provisions in U.S.-negotiated FTAs in recent years. The controversy revolves around whether to assert the more far-reaching IPR provisions of the KORUS FTA or to adopt the somewhat more flexible “May 10<sup>th</sup> Agreement” provisions found in the Colombia, Peru, and Panama FTAs.<sup>67</sup> Based on published reports, it appears that U.S. negotiators are trying to develop an approach that would build on the May 10<sup>th</sup> Agreement, which sets different standards for developed countries (as found in the KORUS FTA) than developing countries (as in the Colombia, Panama, and Peru FTAs) for certain intellectual property provisions.<sup>68</sup>

In late November 2013, USTR reportedly introduced a revised proposal that would attempt to balance the provision of certain patent protections with the ability of developing countries in the TPP to access needed medicines.<sup>69</sup> The new proposal tracks the intent of the May 10<sup>th</sup> provisions by reportedly providing options to developing countries in the TPP concerning certain patent protections, at least as long as they remained a developing country based on some agreed-upon benchmark. According to reports, the proposal would allow developing countries to follow the provisions of the U.S. Peru FTA, under which:

- Patent term extensions, which allow for the extension of a patent term in cases of “unreasonable” delay in market approval, would be optional;
- Patent linkages—preventing regulators from extending market approval to a generic drug without determining that an existing patent would not be violated—would be optional provided a rights-holder would otherwise be able to defend the patent; and
- Data exclusivity, the prohibition of use by generics of clinical test data (usually supplied by the original patent holder), would be for five years after marketing approval for the patented product. However, the Peru FTA permitted the clock to start on the exclusivity period at the time of first-country market approval if the second country approved the product within six months of the date of first market approval.

Countries reportedly would be eligible for these provisions based on an economic indicator such as per capita gross national income (GNI) or product (GDP). If the World Bank benchmark of \$12,161 per capita GNI was used, Malaysia, Mexico, Peru, and Vietnam would qualify as

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<sup>67</sup> The May 10<sup>th</sup> provisions, which applied to the Colombia, Peru, and Panama FTAs, among other issues, relaxed IPR provisions on patent term extensions, patent linkages, and data exclusivity. For more information about these provisions, see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

<sup>68</sup> “U.S. Discussing Tailored Approach to IPR for Medicines in Trans-Pacific Partnership,” Bloomberg BNA, November 29, 2013;

<sup>69</sup> USTR, “Stakeholder Input Sharpens, Focuses U.S. Work on Pharmaceutical Intellectual Property Rights in the Trans-Pacific Partnership,” release, November 29, 2013, <http://www.ustr.gov/about-us/press-office/blog/2013/November/stakeholder-input-sharpens-focuses-us-work-on-pharmaceutical-IP-in-TPP>. This proposal replaces a prior U.S. offer known as the Trade Enhancing Access to Medicines (TEAM) initiative, which would have encouraged companies to market innovative drugs in TPP markets more quickly by making stronger patent term extensions, data exclusivity, and patent linkage provisions conditional to firms who apply for marketing approval for their products in an expedited fashion. This proposal reportedly was roundly criticized by other TPP participants.

developing in the TPP. Other countries would have to adhere to as yet undetermined standards based on language contained in the Australia, Chile, and Singapore FTAs with the United States.<sup>70</sup>

TPP partners also reportedly have discussed an alternative proposal, adopting one standard but allowing developing countries to phase in compliance with those obligations.<sup>71</sup> However, consensus remains lacking on whether to include these provisions at all. A November 2013 proposal from Canada, Chile, Malaysia, and New Zealand, and Singapore omitted these additional patent protections.<sup>72</sup>

The U.S. proposal also supports pre-grant opposition procedures, which allows third parties to object to patents at their initial application to challenge frivolous or substandard patent applications. Prior to this proposal, the United States reportedly favored eliminating pre-grant opposition.<sup>73</sup>

### ***Biologics***

The United States reportedly is seeking a 12-year period of data exclusivity for biologics under the proposed TPP. Biologics are medical preparations derived from living organisms, but generally are not considered distinct from traditional pharmaceuticals in U.S. IP law.<sup>74</sup> Biotechnology groups claim that the development and approval process for large molecule biologics—as opposed to small molecule pharmaceuticals—are more complex and require longer exclusivity periods for a product to be commercially viable. Under the 2010 Affordable Care Act, biologics are given a 12-year exclusivity period. Moreover, the USTR, in its blog release, stated “[t]raditionally, the U.S. approach to trade negotiations has been to base proposals on existing U.S. law, where the current standard is 12 years.”<sup>75</sup> Various groups of Senators, totaling 40 in number, have written to the President supporting the 12-year exclusivity period, as has a group of 40 Representatives.<sup>76</sup> Separately, a letter signed by 7 Representatives requests the President refrain from introducing a 12-year exclusivity provision in the negotiations.<sup>77</sup>

### ***Trade Secrets***

The United States is reportedly seeking language to improve protections for trade secrets, especially as the USTR continues to describe protection of U.S. trade secrets as a growing

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<sup>70</sup> “In TPP, U.S. Floats 12-year Data Period for Biologics, Flexibilities for Developing Countries,” *Inside U.S. Trade*, November 29, 2013.

<sup>71</sup> “TPP Countries Discuss Single Standard for Drug IPR Rules, With Phase-In,” *Inside U.S. Trade*, May 16, 2014.

<sup>72</sup> *Ibid.*

<sup>73</sup> Public Citizen, “Briefing Memo: Analysis of Leaked U.S. Paper on Eliminating Patent Pre-Grant Opposition,” July 7, 2011 <http://www.citizen.org/analysis-of-leaked-US-paper-on-eliminating-patent-pre-grant-opposition>.

<sup>74</sup> For more information on biologics, see CRS Report R41483, *Follow-On Biologics: The Law and Intellectual Property Issues*, by John R. Thomas.

<sup>75</sup> USTR, “Stakeholder Input Sharpens, Focuses U.S. Work on Pharmaceutical Intellectual Property Rights in the Trans-Pacific Partnership,” release, November 29, 2013.

<sup>76</sup> Hatch-Kerry Letter to Ambassador Ron Kirk, September 12, 2011, <http://www.finance.senate.gov/newsroom/ranking/release/?id=9fc0a1bb-e420-418a-835c-14512434a436>; House letter of July 27, 2011, available at <http://infojustice.org/wp-content/uploads/2011/07/40-Members-of-Congress-07272011.pdf>.

<sup>77</sup> “Waxman Wants Biologic Drugs Kept Out of Trade Talks,” *The Hill*, August 4, 2011.

challenge in its 2014 Special 301 report on IPR protections abroad.<sup>78</sup> This text responds to the concerns of U.S. business that governments have pressured them to reveal trade secrets or transfer technology to further a country's "indigenous innovation" policies. Companies are also reportedly increasingly victimized by outright theft of their trade secrets, especially through cybertheft, and have decried the often lax remedies available to combat such theft. Penalties for trade secret theft vary widely among TPP countries; one U.S. objective in the negotiations reportedly is to require countries to establish criminal penalties for the theft of trade secrets.<sup>79</sup>

In addition, other chapters in the TPP negotiations may also concern the issue of trade secrets. Such an agenda may involve prohibiting countries from: (1) conditioning market access on technology transfer; (2) seeking concessional terms for acquiring or licensing IPR by SOEs; (3) requiring the use of locally owned or developed IPR; (4) promoting the development of local standards to unfairly advantage local firms; and (5) requiring the unnecessary disclosure of confidential business information, or failing to protect that information.<sup>80</sup> In addition, Malaysia reportedly proposed preventing countries from requiring the disclosure of proprietary formulas for food and food products as a condition for market access.<sup>81</sup> It is not thought that these practices are particularly egregious in any of the countries currently negotiating the TPP, but they may become more salient if other nations accede to the agreement.

## Rules of Origin

Rules of origin (ROO) define those goods that originate in the FTA region and therefore are eligible for preferential treatment under the agreement. The negotiating teams are far along in their consideration of product-specific rules, seeking a single TPP rule of origin to the extent possible.<sup>82</sup> The TPP participants have already agreed that the ROO would be "objective, transparent, and predictable." Negotiators reportedly also have agreed that inputs produced in any TPP country may be cumulated so that a product produced with components made in multiple TPP countries can be claimed as originating within the TPP region and therefore be eligible for preferential treatment.

While ROOs have been discussed in terms of market access for automobiles and concerns about global supply chains generally, they have proved especially contentious with regard to textiles and apparel.<sup>83</sup> In all previous FTAs, the United States has used the "yarn forward" rule. This rule requires that an apparel product could be considered from within the FTA area, and therefore eligible for preferential treatment, if the entire manufacture of the product, from the spinning of the yarn to final assembly, has occurred within the FTA region. Representatives of the U.S. textile industry have argued for the tighter "yarn forward rule" to be included in the TPP.<sup>84</sup> Some U.S.

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<sup>78</sup> USTR, 2014 Special 301 Report, pp. 16-18, available at <http://www.ustr.gov/sites/default/files/USTR%202014%20Special%20301%20Report%20to%20Congress%20FINAL.pdf>.

<sup>79</sup> "TPP Members Reluctant To Adopt Criminal Sanctions For Trade Secret Theft," *Inside U.S. Trade*, July 22, 2013.

<sup>80</sup> This nonexclusive list of possible negotiating objectives was drawn from the U.S. Trade Representative's 2014 Special 301 Report section of trade secrets and forced technology transfer, pp. 16-18.

<sup>81</sup> "Civil Society Groups Air Worries About Malaysian TPP Formula Proposal," *Inside U.S. Trade*, March 8, 2013.

<sup>82</sup> Conversation with USTR officials.

<sup>83</sup> For more information, see CRS Report R42772, *U.S. Textile Manufacturing and the Trans-Pacific Partnership Negotiations*, by Michaela D. Platzer.

<sup>84</sup> Textile and Apparel Alliance for TPP, letter to USTR Ambassador Ron Kirk, February 29, 2012.

apparel firms, retailers, and distributors, as well as some TPP countries, including Vietnam, seek a less restrictive “cut and sew,” or single transformation, rule, which would allow its products manufactured from materials of non-TPP origin to benefit from the TPP. While U.S. negotiators remained committed to the yarn-forward rule, the United States and other TPP partners reportedly have been discussing compromise positions. For example, the United States has proposed “short-supply provisions” to allow a certain amount of non-originating inputs in apparel assembly on a permanent or temporary basis and reportedly tabled an initial list of yarns and fabrics eligible for the short-supply designation during the Lima Round in May 2013.<sup>85</sup> Alternatively, some have proposed regional value content ROOs which would allow for certain non-originating inputs to be used as long as originating inputs made up a certain percentage of the value of the product.<sup>86</sup> However, a more liberalized ROO may be opposed by U.S. FTA partners such as Mexico and Peru, where textile and apparel industries have been oriented to trade with the United States through the yarn-forward standard.<sup>87</sup>

### Technical Barriers to Trade

Technical barriers to trade (TBT) are standards and regulations that are intended ostensibly to protect the health and safety of consumers and for other legitimate purposes, but through design or implementation, discriminate against imports. In order to minimize trade distortion, WTO members must adhere to the Agreement on Technical Barriers to Trade. The TBT Agreement covers voluntary standards that industries apply, technical regulations that governments impose for health and safety purposes, and assessment procedures that governments employ to determine that a product meets required standards. The TBT Agreement establishes rules and procedures for member countries to follow, including making sure that standards, technical regulations, and conforming assessment procedures are applied nondiscriminately and in a manner not more trade restrictive than necessary. In addition, it requires that members practice transparency as regulations are developed and applied, that international standards are used where appropriate, and that the domestic technical regulations of trading partners are recognized as equivalent to domestic regulations when possible. A key provision of the agreement is that WTO members have a central point of inquiry from which firms can ask for information on standards and regulations. U.S. FTAs, including the U.S.-South Korea FTA (KORUS), expanded on the TBT agreement by, among other things, providing opportunities for partner countries to comment on proposed standards and regulations and the implementation of regulations. TPP negotiators are seeking to build on the KORUS FTA as a model in developing TBT provisions and are including annexes on sector-specific TBT commitment to harmonize their approaches to regulations in key areas.

### Transparency and Pricing of Health Care Technology and Pharmaceuticals

Several TPP participants, including Australia, Canada, and New Zealand, administer a national formulary for medicines purchased by the government for its national health service.<sup>88</sup> The United

<sup>85</sup> TPP Short Supply Presentation, USTR, Department of Commerce, [http://www.tppapparelcoalition.org/uploads/Short\\_Supply\\_Power\\_Point.pdf](http://www.tppapparelcoalition.org/uploads/Short_Supply_Power_Point.pdf); “TPP Partners Need Time To Evaluate U.S. ‘Short-Supply’ List for Textiles,” *Inside U.S. Trade*, May 30, 2013.

<sup>86</sup> “Negotiators Signal Start of Process for Resolving Apparel Rules of Origin,” *Inside U.S. Trade*, December 14, 2012.

<sup>87</sup> Jeffrey J. Schott, *et al.*, *Understanding the Trans-Pacific Partnership*, Peterson Institute of International Economics, Policy Analysis #99, January 2013, p. 24.

<sup>88</sup> A formulary is a list of medicines approved for prescription under a medical plan.

States has expressed concern that the practices and procedures such as national healthcare programs, including New Zealand's Pharmaceutical Management Agency (Pharmac), which maintains the formulary, put "innovative pharmaceutical products," often made in the United States, at a disadvantage because access to the country's health care technology markets can be blocked by government's use of procedures that are nontransparent or do not provide due process.<sup>89</sup> In negotiations with Australia over a similar system, the United States and Australia agreed to a series of consultation and transparency mechanisms, designed to afford U.S. manufacturers an opportunity to make their case for inclusion in the formulary. New Zealand reportedly has ruled out changes to PHARMAC absent "reciprocal" concessions by the United States to federal or state-level drug pricing or reimbursement programs such as Medicaid.<sup>90</sup> In Canada, each province maintains its own pharmaceutical formulary.

## **Foreign Investment**

Foreign investment has been a high priority for the United States in its FTA negotiations, especially regarding the right of establishment by foreign goods and services providers in the territory of a partner-country. Negotiators likely are discussing such issues as nondiscriminatory treatment of foreign investment and investors; minimum standard of treatment; rules on expropriation; transfer of payments of the foreign investor out of the host territory; exceptions for identified nonconforming measures; state-to-state and investor-state dispute settlement (ISDS) procedures; and prohibitions on performance requirements, such as mandatory export levels and local content stipulations. These provisions generally are based on the current iteration of the U.S. model bilateral investment treaty (BIT).

One issue that has become contentious is whether to include an ISDS provision, which allows for private foreign investors to seek international arbitration against host governments to settle claims over alleged violations of foreign investment provisions under the agreement. Except for the FTA with Australia, U.S. FTAs have included an investor-state arbitration provision. The investor-state provision is designed to protect foreign investors from the vagaries of domestic judicial systems, particularly in developing countries, for example, in such cases as government expropriation of foreign-held assets.<sup>91</sup>

Critics have argued that investor-state procedures give foreign investors greater protection than domestic investors and infringe on the sovereignty of the host government in protecting the health and safety of its citizens. However, provisions in the KORUS and other U.S. FTA on the shared understanding of expropriation states that "nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization...do not constitute indirect expropriation."<sup>92</sup> Nonetheless, some maintain that the threat of such suits may serve as a "chilling effect" preventing nation states from considering such regulations.<sup>93</sup>

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<sup>89</sup> *FTB report*, New Zealand, p. 263.

<sup>90</sup> "U.S. Leaked TPP Proposal on Drug Pricing Sets Up Fight with New Zealand," *Inside U.S. Trade*, November 3, 2011.

<sup>91</sup> Proponents argue that these provisions are modeled after U.S. laws and an interpretation of the "takings clause" of the U.S. Constitution.

<sup>92</sup> U.S.-South Korea FTA, Annex 11-B "Expropriation." Similar language reportedly appears in leaked versions of the TPP investment chapter.

<sup>93</sup> "Regulatory Chill and the Threat of Arbitration: A View from Political Science," by Kyla Tienhaara, (October 28, (continued...))

Until recently, Australia has argued against including an investor-state dispute settlement mechanism—although it too has investor-state provisions in many of its FTAs—thus generating disagreement with other TPP partners. Opposition to ISDS may stem in part from an attempt by Philip Morris International to use an investor state provision in an Australian-Hong Kong bilateral investment treaty to take the Australian government to arbitration for its requirement for plain packaging for cigarettes, which the company believes expropriates its trademarks. Philip Morris filed the suit from its Asian operations headquartered in Hong Kong.<sup>94</sup>

Australia's blanket opposition to ISDS, however, appears to have evolved under the conservative government of Prime Minister Tony Abbott. Australia now has indicated that it will consider ISDS provisions in FTAs on a case-by-case basis.<sup>95</sup> For example, Australia did negotiate ISDS provisions in its FTA with South Korea, but not in its FTA with Japan, both concluded in 2014.

Another investment-related issue that has raised some concerns relates to the ability of governments to impose controls on capital outflows, particularly in times of financial crises. Previous U.S. FTAs contain clauses which call for the free flow of capital in order to facilitate trade and investment. They also allow for the “prudential exception” whereby controls are imposed to alleviate short-term balance of payments problems in order to protect the stability of the financial system, among other prudential measures. Some Members of Congress have raised concerns that in light of global financial crises, the language in FTAs might not adequately preserve governmental discretion to impose controls when they see fit.<sup>96</sup> A new approach on the issue by the International Monetary Fund (IMF), which has pointed to the usefulness of short-term capital controls in potentially ameliorating the effects of capital volatility during periods of economic instability, may also affect the outcome of the negotiations.<sup>97</sup>

## **Competition Policies**

National competition laws and regulations are intended to protect consumers by ensuring that one firm does not so dominate a sector of the economy as to inhibit market entry and stifle competition. Some U.S. FTAs have included provisions to limit the trade-distorting effects of such laws. Among other things, U.S. FTAs require that the United States and the partner country(ies) inform persons from a partner country, who may be subject to administrative actions under domestic antitrust laws, of related hearings and provide them the opportunity to make their case. Under these FTAs, the partner countries agree to cooperate in enforcing competition laws through the exchange of information and consultation. In addition, designated monopolies and state-enterprises are to operate in conformance with the agreement and in accordance with commercial considerations.

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(...continued)

2010), *Evolution in Investment Treaty Law and Arbitration*, Chester Brown, Kate Miles, eds., Cambridge University Press, 2011. Available at SSRN: <http://ssrn.com/abstract=2065706>.

<sup>94</sup> *International Trade Daily*, March 6, 2012.

<sup>95</sup> “Frequently Asked Questions on Investor-State Dispute Settlement (ISDS),” Australia Department of Foreign Affairs and Trade website, <https://www.dfat.gov.au/fta/isds-faq.html>.

<sup>96</sup> *International Trade Daily*, May 29, 2012.

<sup>97</sup> “New IMF View on Capital Controls Raises Questions for U.S. Approach in TPP,” *Inside U.S. Trade*, January 4, 2013.

The November 2011 framework indicates that the TPP partners are discussing language for a chapter on competition policy to “promote a competitive business environment, protect consumers and ensure a level playing field for TPP companies.” The text will include language “on the establishment and maintenance of competition laws and authorities, procedural fairness in competition law enforcement, transparency, consumer protection, private rights of action, and technical cooperation.” The U.S. business community has indicated that the provisions on competition policy will be critical in dealing with state-owned enterprises (SOEs), particularly in addressing issues concerning their financing, regulation, and transparency, to ensure that they are not provided an unfair competitive advantage.<sup>98</sup>

## **Trade Remedies**

Trade remedies are measures designed to provide relief to domestic industries that have been injured or threatened with injury by imports. They are regarded by many in Congress as an important trade policy tool to mitigate the adverse effects of unfairly traded imports and import surges on U.S. industries and workers.

The three most commonly used trade remedies are: (1) *antidumping* (AD) remedies, which are designed to provide relief from the adverse price effects of imports sold at less than fair-market value; (2) *countervailing duty* (CVD) remedies, which are used to counter the adverse effects of foreign government subsidies to imports; and (3) *safeguard* actions, which are employed to permit temporary relief so that domestic industries can adjust to the adverse effects of surges in fairly-traded imports. These actions are sanctioned by the WTO as long as they are undertaken in a fair manner and are consistent with rules specified in WTO agreements.

Congress has insisted that the United States retain the right to use trade remedies to counter unfair trade practices and import surges and has expressed this requirement as a priority in trade negotiating authority legislation. It is also reflected in existing U.S. FTAs.

TPP participants are discussing the possibility of including such provisions in the TPP that make trade remedy investigations and actions more transparent and provide due process in their implementation.

## **Labor**

One of the more controversial issues that the TPP partner countries are addressing pertains to the scope and depth of provisions on worker rights. Supporters of strong worker rights, such as labor unions and certain nongovernment organizations (NGOs), are concerned that failure to promote and implement these rights, including collective bargaining, could lead to the imposition of low wages and poor conditions for workers by firms in those countries. In so doing, U.S. workers would be placed at a competitive disadvantage as they compete against low-cost, low-standard labor practices.

The November 2011 TPP framework for negotiations indicates that the agreement will have a separate labor chapter. The language in the framework is ambiguous, stating only that the chapter would “include commitments on labor rights protection and mechanisms to ensure cooperation,

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<sup>98</sup> Briefing by members of the Emergency Committee for American Trade (ECAT).

coordination, and dialogue on labor issues of mutual concern.” The original P-4 agreement includes commitments to cooperate on labor issues.

The scope and depth of worker rights provisions in U.S. trade agreements have evolved over time.<sup>99</sup> The North American Free Trade Agreement (NAFTA), included labor provisions in a side letter requiring all Parties to enforce their own labor standards. The provisions are enforced under a special dispute settlement procedure attached to, but outside of, the main agreement. Based on the 2002 Trade Act, all subsequent FTAs, included a similar provision, but within the body of the agreement.

More recently, under the May 10<sup>th</sup> Agreement, internationally-recognized labor principles were included in FTAs with Peru, Panama, South Korea, and Colombia (see text box above). The agreement stipulated that the four FTAs would require each of the Parties to adopt and to maintain five internationally-recognized worker rights contained in the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up (1998) (ILO Declaration)—the freedom of association; the effective recognition of the right to collective bargaining; the elimination of all forms of compulsory or forced labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. These provisions are enforceable under FTA dispute settlement procedures and violations are subject to potential trade sanctions.

According to a recent USTR summary of negotiating objectives in the TPP, the United States is pursuing provisions similar to the May 10<sup>th</sup> Agreement, as well as seeking provisions to prevent countries from waiving or derogating from labor provisions to attract trade and investment, and promoting the establishment of consultative mechanisms to monitor and address labor concerns.<sup>100</sup>

Some Members of Congress have expressed reservations about adopting the May 10<sup>th</sup> Agreement provisions as the labor negotiating objectives going forward. They have argued that “expanding the scope of obligations could unduly expose the United States to potential unwarranted litigation and trade sanctions on a new and broader array of its labor laws and policies,” and prefer to expand trade capacity building measures to improve labor rights in partner countries.<sup>101</sup> However, the Bipartisan Congressional Trade Priorities Act (BCTPA) TPA legislation introduced in January 2014 includes labor negotiating objectives consistent with the May 10<sup>th</sup> Agreement provisions (see “The May 10<sup>th</sup> Agreement” and Trade Promotion Authority).

Worker rights may also be controversial among the TPP partners. For example, Vietnam and Brunei reportedly have expressed opposition to having worker rights provisions subject to binding dispute settlement procedures. At the Lima Round in 2013, Canada tabled its approach modeled after its Canada-Panama labor cooperation agreement, which does not allow for the suspension of trade concessions as a resolution to a labor-related dispute. Instead, a dispute settlement panel would be limited to mandating the development of an “action plan” to remedy a

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<sup>99</sup> For more information, see CRS Report RS22823, *Overview of Labor Enforcement Issues in Free Trade Agreements*, by Mary Jane Bolle; and CRS In Focus IF00018, *Worker Rights Provisions in Free Trade Agreements*, by Mary Jane Bolle and Ian F. Fergusson.

<sup>100</sup> Available at <http://www.ustr.gov/tpp/Summary-of-US-objectives>.

<sup>101</sup> Letter to Ambassador Ron Kirk, December 21, 2011, by Reps. Camp and Nunes, Sens. Hatch and Thune.

dispute, and if the offending party fails to implement it, a monetary penalty capped at \$15 million could be assessed.<sup>102</sup> This issue is likely to continue to evolve as the negotiations proceed.

The United States reportedly is negotiating a labor action plan (LAP) with Vietnam. This plan may be similar to the LAP negotiated in conjunction with the U.S. FTA with Colombia.<sup>103</sup> That plan included benchmarks to be undertaken by the Colombian government to address perceived weaknesses in Colombian labor laws and practices within specified deadlines. It includes numerous commitments to protect union members and improve worker rights. On May 29, 2014, 153 House Democrats wrote to USTR Froman requesting that the United States negotiate LAPs with Brunei, Malaysia, and Mexico as well. One issue concerning the LAPs is the stage in which they are implemented: prior to signing the agreement, or before, during, or after any potential congressional consideration of TPP.<sup>104</sup>

## **Environment**

Like the U.S. position on worker rights, environmental provisions in U.S. FTAs have evolved over time. As with worker rights, environmental provisions were originally placed in side letters in the NAFTA agreement, and “enforce your own laws” provisions were placed in subsequent FTAs with limited dispute settlement based on the Trade Act of 2002. The May 10<sup>th</sup> Agreement provisions (see above) added an affirmative obligation to adhere to multilateral environmental agreements (MEAs) and allowed for environmental disputes under the FTAs to access the full dispute settlement provisions of the agreements.

According to USTR, it has pushed for the incorporation of the May 10<sup>th</sup> Agreement as well as long-standing provisions in the TPP environmental talks. The U.S. position seeks commitments to fully enforce domestic environmental laws and laws to implement MEAs; not to waive or derogate from environmental protections to encourage trade or investment; provisions to combat wildlife trafficking, illegal logging, and fishing subsidies; and consultative mechanisms to assure stakeholder participation to challenge member state’s adherence to the provisions. For these obligations, the United States has sought binding commitments to be enforced with the same dispute mechanism as other provisions of the agreement.<sup>105</sup> Subjecting the provisions of the environmental chapter to binding dispute settlement has proved controversial, reportedly even among countries that have signed U.S. FTAs with—albeit narrower—environmental chapters with dispute settlement provisions.<sup>106</sup>

A secretary’s draft text of the environmental chapter was leaked in January 2014.<sup>107</sup> Reportedly, this text, prepared by Canada, provides for a special dispute resolution process distinct from one applying to commercial disputes that would not result in trade sanctions. It also merely affirms

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<sup>102</sup> “Canada Tables Alternative Enforcement Mechanism In TPP Labor Chapter,” *Inside U.S. Trade*, May 23, 2013.

<sup>103</sup> For more information, see CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by M. Angeles Villarreal.

<sup>104</sup> “153 House Dems Push for Binding Labor Plans With Four TPP Countries,” *Inside U.S. Trade*, May 29, 2014.

<sup>105</sup> USTR, “Trans-Pacific Partnership: Summary of U.S. Objectives,” <http://www.ustr.gov/tpp/Summary-of-US-objectives>.

<sup>106</sup> “USTR Confirms Objections on Enforceability In TPP Environmental Talks,” *Inside U.S. Trade*, June 29, 2012.

<sup>107</sup> “Leaked TPP Text Underscores U.S. Isolation In Environmental Chapter Talks,” *Inside U.S. Trade*, January 16, 2014.

each party's intention to implement the MEAs it has signed. Both of these positions diverge from reported U.S. positions in the talks. USTR Ambassador Froman responded:

U.S. negotiators have made clear where we don't agree with weaker TPP proposals on environmental provisions, and just how serious we are about making sure that the obligations in the environmental chapter are subject to the same enforcement processes as obligations elsewhere in the TPP, including recourse to trade sanctions. It's true that U.S. negotiators are fighting alone on some of these issues – but that's exactly what we're doing: pressing harder, not retreating.<sup>108</sup>

However, press reports suggest that a subsequent leaked document from February 2014 indicates that the United States has sought to replace language on trade and climate change with text on “transition to a low-emission economy” and has sought less comprehensive language on trade and biodiversity.<sup>109</sup>

## **E-Commerce and Data Flows**

According to the November 2011 framework, the TPP partners are negotiating provisions that would establish rules and procedures for trade in goods and services conveyed by the Internet and other electronic means. The text of the framework states that the provisions would address impediments to such trade, including customs duties, the digital environment, authentication of electronic transactions, consumer protection, localization requirements, and other provisions to ensure the free flow of information.

The United States considers these provisions important with the growth of the use of electronic commerce in an increasingly globalized economy. Recently-concluded U.S. FTAs, such as the U.S.-South Korea FTA, included e-commerce provisions. They are designed to ensure that services distributed electronically benefit from the same protections as services distributed by other means. In addition, no customs duties are to be imposed on digital products, whether distributed electronically or via a physical medium, such as a disk, and digital products are to be treated in a nondiscriminatory manner. The agreement also includes provisions prohibiting unnecessary barriers to the free flow of information.

In the TPP talks, the U.S. proposals reportedly contain language that would prohibit countries from blocking cross-border flows of data over the Internet.<sup>110</sup> If adopted, these provisions could also have implications for a member state's ability to engage in censorship of the Internet. U.S. high technology groups have supported unfettered cross-border data flows and opposed localization requirements that require data or servers to be located in-country in order to promote Internet-based services and cloud-computing. They claim that companies already have their own mechanisms in place to protect privacy and that privacy would not be undermined by open borders on data flows.<sup>111</sup>

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<sup>108</sup> Ambassador Michael Froman, blog post, January 15, 2014,

<http://www.ustr.gov/about-us/press-office/blog/2014/January/The-US-and-Environmental-Protections-in-the-TPP>.

<sup>109</sup> “Trade Leak Shows U.S.’s Weak Environmental Pitch, Groups Say,” *Politico*, February 19, 2014.

<sup>110</sup> “Internet Companies, Copyright Holders Clash Over Free Flow of Data Principles,” *Inside U.S. Trade*, October 20, 2011.

<sup>111</sup> See, for example, letter from the Coalition of Services Industries and other business groups to USTR Kirk on June 9, 2012.

However, TPP partners, such as Australia and New Zealand, reportedly have expressed concern that prohibitions on local data storage could run up against their national privacy laws. Australia reportedly has argued that private-sector based controls would not be sufficient to protect privacy and has suggested alternative language to the U.S. proposal that would give governments more discretion on controlling data flows across borders.<sup>112</sup> Vietnam and Malaysia reportedly have local content restrictions, either for mercantile or censorship reasons.

## **Customs and Trade Facilitation**

Customs valuation and trade facilitation have been long-standing, if unheralded, provisions in U.S. FTAs that aim to ease and expedite the passage of goods over borders, and reduce associated transaction costs. These issues, often the nuts and bolts of how goods move from country to country, which, along with custom valuation have figured prominently WTO negotiations and the WTO Trade Facilitation Agreement. Such provisions have taken on new significance as global supply chains have increased the number of times intermediate goods cross borders and hence the cost of customs bottlenecks to the world economy.

Generally, the United States indicates that it is seeking efficiencies and cooperation in this chapter. Common rules of origin are stressed, but those negotiations are being conducted in a separate chapter. Efficiencies are in the form commitments for the quick release of goods; expedited release of express shipments; advanced ruling on tariff classifications, valuations duties, or other issues; electronic processing of customs documentation, inspections based on risk-management techniques. The United States also seeks cooperative commitments to prevent smuggling, illegal transshipment, and duty evasion.<sup>113</sup>

## **New and Cross-Cutting Issues**

In addition to treating certain existing issues in new or different ways, the TPP also seeks disciplines on certain activities not heretofore addressed in FTAs. These include not only horizontal or cross-cutting issues that address best practices in several negotiations, such as with regulatory coherence, but also issues not generally addressed in previous U.S. FTAs, such as regulatory coherence, supply chain competitiveness, and small- and medium-sized enterprises. While some of the commitments relating to these issues are in stand-alone chapters, others are included, as appropriate, in other chapters of the agreement.

## **Regulatory Coherence**

The issue of regulatory coherence represents one of the new cross-cutting trade issues added to the TPP negotiations. The goal of regulatory coherence is to ease the conditions and costs of trade between TPP countries while affirming the rights of TPP countries to regulate their economies to promote legitimate policy objectives. According to the USTR, this initiative stems from the proliferation of regulatory and nontariff barriers, which have become a major hurdle for business gaining access to foreign markets. Some of the goals of the effort are to “improve regulatory

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<sup>112</sup> *World Trade Online*, July 5, 2012.

<sup>113</sup> USTR, “Trans-Pacific Partnership: Summary of U.S. Objectives,” <http://www.ustr.gov/tpp/Summary-of-US-objectives>; U.S.-Korea FTA, Chapter 7: Customs Administration and Trade Facilitation.

practices, eliminate unnecessary barriers, reduce regional divergence in standards, promote transparency, conduct regulatory processes in a more trade-facilitative manner, eliminate redundancies in testing and certification, and promote cooperation on specific regulatory issues.”<sup>114</sup>

Issues related to regulatory coherence are covered in various chapters, including a stand-alone chapter on regulatory coherence as well as in SPS, TBT, and other chapters. The regulatory coherence chapter recommends that TPP partner countries “endeavor” to establish domestic regulatory structures similar to the U.S. Office of Information and Regulatory Affairs in the Office of Management and Budget, a venue to vet proposed regulations, and their compliance with domestic law and policy, as well as with trade agreements and other international obligations. Aside from seeking to assure regulatory consistency among various domestic agencies, the proposed mechanism would be encouraged to conduct regulatory impact assessments (RIA) that would assess the need for a given regulation, conduct cost-benefit analysis, and assess alternatives to regulation. The established body, process, or mechanism would also seek to assure transparency and openness in the rule-making process. The draft also recommends the establishment of a regulatory coherence committee among TPP members. It is unclear, how much, if any, of these provisions would be subject to dispute settlement.<sup>115</sup>

## **State-Owned Enterprises**

Broadly speaking, state-owned enterprises (SOEs) are businesses directly or indirectly owned or influenced by a government. As such, governments may provide these businesses with advantages—such as subsidies, low cost credit, preferential access to government procurement, and trade protection—not enjoyed by their private counterparts, thereby hindering competition and market access. Such advantages may also be directed toward companies not owned but significantly favored or supported by the government. This concern over potential anti-competitive behavior and restrictive trade has shaped texts by the United States regarding SOEs in the proposed TPP agreement. In the context of the current TPP negotiations, the SOE presence in Vietnam—estimated to represent 40% of output—may warrant particular attention, although Malaysia and Singapore also have important SOE sectors.<sup>116</sup> In addition, as the TPP could become a template for a larger Asia-Pacific FTA or future WTO negotiations, wider applicability of these provisions to SOEs in other countries, particularly China, may be envisioned.

In light of these concerns about fair competition, SOEs are addressed, though not extensively, in several existing U.S. FTAs. NAFTA and subsequent U.S. FTAs with Australia, Chile, Colombia, Peru, and South Korea have similar language on SOEs. Though the specific details vary among these agreements, most contain national treatment, nondiscrimination, and transparency provisions, while upholding the prerogative of countries to establish and maintain SOEs. The

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<sup>114</sup> “Trans-Pacific Partnership (TPP) Trade Ministers’ Report to Leaders,” November 12, 2011, available at <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/trans-pacific-partnership-tpp-trade-ministers%E2%80%99-re>.

<sup>115</sup> The draft text is available at <http://www.citizenstrade.org/ctc/wp-content/uploads/2011/10/TransPacificRegulatoryCoherence.pdf>; See also “U.S. Proposal for TPP Regulatory Coherence Chapter Mostly Nonbinding,” November 4, 2011.

<sup>116</sup> Economist Intelligence Unit, *Vietnam Country Report*, March 2012, p. 12.

U.S.-Singapore FTA includes somewhat more extensive provisions on SOEs, but they largely apply only to Singapore and not the United States.<sup>117</sup>

Though some business groups, government officials, and labor groups have all expressed an interest in strong SOE provisions in the TPP, it remains unclear what form such provisions may take.<sup>118</sup> Such measures may include provisions that seek to ensure that SOEs operate on a commercial basis, and to address potential trade and investment barriers. SOE disciplines may be enforced based on a harm test similar to that used in the WTO subsidies agreement.<sup>119</sup> Broadly, these provisions will likely seek to achieve competitive neutrality with regard to SOEs. Competitive neutrality, a concept supported by both U.S. government and business groups, refers to an environment in which SOEs receive no competitive advantages beyond those enjoyed by private sector companies.<sup>120</sup>

Not all policy observers, however, agree on the appropriate strength or even necessity of SOE provisions in the TPP. Though the scale and the nature of their behavior differ, SOEs exist in some form in all TPP countries. In the United States for example, organizations such as the Federal National Mortgage Association (Fannie Mae), and the U.S. Postal Service are operated by the government and provide market-oriented products.<sup>121</sup> Therefore, as with most trade negotiations, the U.S. position on SOEs likely seeks to balance both U.S. defensive and offensive interests.<sup>122</sup> Some observers suggest that existing regulations may already adequately temper advantages of SOEs (e.g., subsidies, financing), while others maintain that additional provisions, particularly regarding transparency, will only make existing disciplines more effective.<sup>123</sup>

The United States first tabled its SOE proposal in late 2011. Australia tabled alternative SOE language in 2013. TPP partner countries have reportedly generally agreed on a definition of and general provisions regarding SOEs, but negotiations continue over what exceptions will be allowed.<sup>124</sup> Some countries such as Vietnam may be seeking exceptions for a significant portion

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<sup>117</sup> For instance, the agreement states that Singapore's government must ensure that any government enterprise "acts solely in accordance with commercial considerations in its purchase or sale of goods or services" and that Singapore must make public a listing of organizations that satisfy the agreement's definition of a "covered entity," essentially any company organized in Singapore above a certain size and with a sufficient level of government influence. This list is also to include the ownership structure of the organization, members of government that serve on the board of directors, and total revenue or assets; USTR, *United States-Singapore Free Trade Agreement*, May 2003, pp. 133-140, [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset\\_upload\\_file708\\_4036.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf).

<sup>118</sup> Labor groups are particularly concerned with SOE investment in the United States and potential unfair competition in the domestic market. "Brown, Kyl Urge Disciplines on SOE U.S. Investments as Part of TPP Deal," *World Trade Online*, August 17, 2011.

<sup>119</sup> "USTR Expected to Clarify Provision in SOE Proposal on 'Harm Test' Soon," *Inside U.S. Trade*, March 22, 2012.

<sup>120</sup> Deborah A. McCarthy, Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, U.S. Department of State, "State Capitalism and Competitive Neutrality" (speech, APCAC 2012 U.S.-Asia Business Summit, March 2, 2012), <http://www.state.gov/e/eb/rls/rm/2012/181520.htm>; and Coalition of Service Industries; U.S. Chamber of Commerce, *State-Owned Enterprises: Correcting a 21<sup>st</sup> Century Market Distortion*.

<sup>121</sup> For more information, see CRS Report RL30365, *Federal Government Corporations: An Overview*, by Kevin R. Kosar.

<sup>122</sup> "U.S. Fixes Future-SOE 'Loophole,' Sends TPP Partners Proposed Text," *Inside U.S. Trade*, October 20, 2011.

<sup>123</sup> "Stakeholders Urge USTR to Make Changes to SOE Proposal in TPP Talks," *Inside U.S. Trade*, September 29, 2011.

<sup>124</sup> "Froman: U.S. Engaging in Bilateral Talks with TPP Parties on SOE Exceptions," *Inside U.S. Trade*, October 2, 2014.

of their SOEs.<sup>125</sup> Negotiators have reportedly acknowledged that SOEs operate in all TPP countries and are working to craft disciplines that do not prevent their proper operations.<sup>126</sup>

## Competitiveness and Global Supply Chains

Trade in intermediate goods is an increasingly important component of international trade for many firms. These intermediate goods, which serve as inputs in the production of final goods, accounted for more than half of all nonfuel merchandise traded in 2009.<sup>127</sup> Such intermediate goods represent stages along a global supply chain—the path a good takes as it is transformed from its basic components into a final product used by consumers. This path often crosses multiple international borders, sometimes more than once. U.S. imports from China, for example, may contain components sourced from other parts of East Asia, Europe, Latin America, and elsewhere, including from the United States. The U.S. International Trade Commission (USITC) estimates that 8.3% of the value of U.S. imports is actually U.S. components that have been incorporated into other goods abroad and re-imported into the United States.<sup>128</sup>

It is unclear exactly how the TPP will address supply chains, although the issue will be addressed in a stand-alone chapter as well as in other chapters covering issues related to supply chains. The broad range of issues affecting supply chains involve many chapters already included in U.S. FTAs. Business groups have encouraged negotiators to consider several aspects that may affect the flow of goods into and out of TPP countries, and, hence the competitiveness in global supply chains of firms in TPP countries. These include harmonization of standards, adequate infrastructure (ports, roads, etc.) to facilitate trade; simplification of rules of origin; and greater customs efficiency.<sup>129</sup>

Competitive supply chains and strong rules of origin may not always be mutually consistent goals. As a regional FTA, some international supply chains may be encompassed by the current negotiating partners. Other supply chains, however, may incorporate intermediate goods that have moved into TPP countries at some point in the production process. These supply chains that incorporate goods originating outside TPP countries, such as apparel production in Vietnam that uses Chinese fabric, may present a challenge to negotiators as they try to develop rules of origin that balance a desire for a TPP that ensures competitiveness and cost efficiency with concerns over outside countries benefitting from the TPP agreement without adhering to its requirements.

## Small- and Medium-Sized Enterprises

Small- and medium-sized enterprises (SMEs) (firms with less than 500 employees by the U.S. definition) account for the majority of firms involved in international trade (about 97%), but they account for a much smaller share of the value of U.S. trade (about 30%).<sup>130</sup> In fact, in 2009, eight

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> World Trade Organization and the Institute of Developing Economies, *Trade Patterns and Global Value Chains in East Asia: From Trade in Goods to Trade in Tasks*, 2011.

<sup>128</sup> USITC, *The Economic Effects of Significant U.S. Import Restraints*, Investigation No. 332-325, Publication 4253, August 2011, p. xv, <http://www.usitc.gov/publications/332/pub4253.pdf>.

<sup>129</sup> Emergency Committee for American Trade, *ECAT 2011 Agenda*, June 14, 2011, p. 76.

<sup>130</sup> In the U.S. the typical definition for an SME is a firm with fewer than 500 employees. Other countries use different (continued...)

firms alone accounted for more than 10% of all U.S. exports.<sup>131</sup> SMEs, however, also participate in trade indirectly as suppliers, feeding parts and components into the supply chain of larger, finished products that can be exported. Though SMEs represent a relatively small share of U.S. trade, they employ approximately half of the U.S. workforce in the nonfarm private sector.<sup>132</sup> In addition, academic studies have shown that small businesses create disproportionately more jobs than large businesses, though this may be due more to their age than their size—small firms are typically also young firms.<sup>133</sup>

The characteristics of SMEs and their relatively small presence in U.S. trade have led to government efforts to improve SME access to international markets. The USTR commissioned a series of reports from the ITC regarding the role of SMEs in U.S. exporting activities.<sup>134</sup> Those reports identified barriers limiting SME access to foreign markets, and surveyed SMEs for suggestions on policy changes that could ease SME exporting activities. An increased focus on FTAs and other trading agreements was among the top three most frequent responses provided.<sup>135</sup>

The proposed TPP agreement includes a stand-alone chapter on SMEs, although provisions related to SMEs are included in other chapters. This chapter may focus on SME's capacity to take advantage of the enhanced trading opportunities gained through the potential FTA. Though details of the agreement remain sparse, the TPP country trade ministers' statement suggests that the agreement will address concerns SMEs "have raised about the difficulty in understanding and using FTAs."<sup>136</sup> For example, a representative from USTR suggested that the agreement will attempt to address informational challenges SMEs have cited, such as access to foreign country tariff schedules and regulations affecting imports.<sup>137</sup> The negotiations on the SME chapter were concluded during the Dallas round in May 2012.<sup>138</sup> The quick conclusion on this topic may represent both a broad consensus among the negotiating partners and relatively uncontroversial provisions.

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employment cutoffs or other metrics to delineate SMEs.

<sup>131</sup> The trade statistics in this section come from: U.S. Census Bureau, Department of Commerce, *A Profile of U.S. Importing and Exporting Companies, 2008-2009*, CB11-60, April 12, 2011, p. 25, <http://www.census.gov/foreign-trade/Press-Release/edb/2009/text.pdf>. Not all U.S. exports and imports can be matched to specific companies. In 2009, this "unidentified" trade accounted for 11% of exports and 13% of imports.

<sup>132</sup> Firm and employment share data from U.S. Census Bureau, Department of Commerce, *Statistics of U.S. Businesses: Statistics about Business Size*, <http://www.census.gov/econ/smallbus.html#ReptSize>.

<sup>133</sup> David Neumark, Brandon Wall, and Junfu Zhang, "Do Small Businesses Create More Jobs? New Evidence for the United States from the National Establishment Time Series," *Review of Economics and Statistics*, vol. 93, no. 1 (February 2011), pp. 16-29; John C. Haltiwanger, Ron S. Jarmin, and Javier Miranda, *Who Creates Jobs? Small vs. Large vs. Young*, National Bureau of Economic Research, NBER Working Paper 16300, August 2010, <http://www.nber.org/papers/w16300>.

<sup>134</sup> These reports can be found at [http://www.usitc.gov/research\\_and\\_analysis/small\\_med\\_enterprises.htm](http://www.usitc.gov/research_and_analysis/small_med_enterprises.htm).

<sup>135</sup> USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms*, Investigation No. 332-509, USITC Publication 4169, July 2010, pp. 3-27.

<sup>136</sup> USTR, "Outlines of the Trans-Pacific Partnership Agreement," fact sheet, November 2011, <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/united-states-trans-pacific-partnership>.

<sup>137</sup> Comments from Ambassador Demetrios Marantis at the Wilson Center event, *The Trans-Pacific Partnership and the Future of International Trade*, August 8, 2012.

<sup>138</sup> Amy Tsui, "Good Progress Being Made in TPP Dallas Round, U.S. Negotiator Says," *International Trade Daily*, May 5, 2012.

## **Institutional Issues**

The proposed TPP likely will contain provisions related to dispute settlement and governance of the agreement. Given that the proposed TPP is being touted as a “living agreement,” being open to new members, formal procedures may be established for new members to accede to the agreement.

### **Secretariat**

The existence or characteristics of a secretariat for the proposed TPP may be under consideration during the negotiations. Generally, U.S. FTAs have had minimal structures. From NAFTA onward, they have included a commission co-chaired by USTR and trade ministers of the respective parties to the agreement. Primarily, they have been tasked with: (1) supervising the implementation of the agreement; (2) resolving disputes arising from its interpretation or application (see dispute settlement, below); and (3) supervising work of committees established under the agreement. The commission meets regularly once a year, and by special session at the request of a party. The agreements often have created committees on specific issues. KORUS has working-level committees on outward processing zones and fisheries. However, U.S. agreements do not have free-standing secretariats, and activities are carried out by staff in member’s respective trade ministries.<sup>139</sup> Similarly, the P-4 agreement has a commission, but does not have a standing secretariat, although New Zealand serves a repository of documents. However, other economic organizations in the Asia-Pacific region, such as ASEAN and APEC, do have secretariats that engage in trade capacity building and technical assistance activities, as well as conduct studies for and about their members. Negotiators may debate the question of whether having a formal secretariat is necessary or desirable to implement this agreement, especially given the number of participants.

### **Dispute Settlement**

Previous U.S. FTAs as well as the P-4 agreement provide options to resolve disputes arising under the agreement. These are in addition to procedures with regard to investor-state dispute resolution (discussed above), or specialized provisions for certain disputes—for example, motor vehicles in the U.S.-Korea FTA.<sup>140</sup> In general, these agreements are designed to resolve disputes in a cooperative manner. A party first seeks redress of a grievance through a request for consultation with the other party. These steps include:

- initial consultations;
- meeting of the joint committee representing Cabinet-level trade officials of each parties; and
- establishment of a dispute settlement panel.

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<sup>139</sup> The NAFTA Commissions for Labor Cooperation and on Environmental Cooperation are an exception as they do have free-standing secretariats.

<sup>140</sup> For more detailed information on the U.S.-South Korea FTA dispute settlement process, see CRS Report R41779, *Dispute Settlement in the U.S.-South Korea Free Trade Agreement (KORUS FTA)*, by Brandon J. Murrill.

In previous agreements, panels have been composed of three arbiters, of which each side appoints one and the third is appointed by mutual consent, or failing that, by lot from a list of individuals not nationals of either side. After the panel makes its decision, the unsuccessful party would be expected to remedy the measure or practice under dispute. If it does not, compensation, suspension of benefits, or fines have been traditional remedies. In addition, WTO dispute settlement may also be used in instances where the dispute is common to both WTO and FTA rules. Although State-State dispute settlement has been infrequent under U.S. FTAs, the size of the potential agreement, the inclusion of new members, and the negotiation of new provisions may cause negotiators to scrutinize existing models of FTA dispute settlement to meet the challenges this agreement may bring.

One question is whether dispute settlement will cover all the provisions of the agreement. The May 10<sup>th</sup> Agreement stipulated that labor and environmental provisions would be fully enforceable under U.S. FTAs, and dispute settlement to those provisions in the Colombia, Peru, Panama, and South Korea FTAs. Whether these provisions apply to the TPP have proven controversial both domestically, and among TPP partners in the negotiations.

## **A “Living Agreement”**

The TPP has been envisaged as a “living agreement,” one that is both open to new members willing to sign up to its commitments and open to addressing new issues as they evolve. Thus far, the manner in which new members are added while the negotiations are still under way, as with the case of Canada, Mexico, and Japan, has followed a process agreed by current members informally, with each aspiring candidate being approved with the consensus of the other parties. In practice, the aspiring participant must not only agree to negotiate saying that “everything is on the table,” but must show in words, deeds, or perception that there is a genuine willingness to negotiate on issues sensitive to others and to commit to the standards of the eventual agreement. This has led to months of bilateral consultations on issues of interest to the other parties and confidence building measures in areas of the greatest sensitivity.

In the case of Canada, the United States, Australia, and New Zealand had concerns about Canada’s supply management system for dairy and poultry. The United States was also interested in leveraging action on Canada’s then-languishing legislation to modernize its copyright laws. In return for entry in the talks, Canada and Mexico reportedly agreed not to seek to reopen chapters already agreed in the TPP, or possibly, sub-chapters that contained areas of agreement. Japan, meanwhile, agreed to commitments regarding its beef, auto, and insurance sectors, in order to become a negotiating partner in the TPP talks.

While the expansion of the group has been publicly contemplated, as a trans-Pacific agreement, to date it has focused first on APEC countries. Of these, there are many potential candidates, from relatively advanced economies such as South Korea and Taiwan, to middle-income states with dynamic economies and youthful populations like Thailand or the Philippines. Other countries beyond APEC, such as Colombia and Costa Rica, have expressed interest, and it is conceivable that additional countries or trade blocs beyond the Pacific shores could link up to the agreement in the future.

No new members are expected to join the negotiations at this stage, but may accede later to the final agreement. For example, South Korea has expressed interest in participating in the talks, but U.S. Administration officials suggest this would most likely occur after existing negotiations conclude.<sup>141</sup> Some observers have suggested that South Korea could also join the TPP after the negotiations conclude but before the agreement is implemented.<sup>142</sup> The accession process raises the question of whether a country, especially one with political or economic heft, can be expected to simply join an agreement already negotiated or whether it should have input on the existing agreement, especially if the goal is to produce a free trade area for the Asia-Pacific, or beyond. Yet, reopening the agreement's substantive provisions with each new entrant—as opposed to its market access provisions which presumably would need to be negotiated with each existing member anyhow—offers up its own difficulties. The WTO accession process, whereby countries agree to the established WTO trade rules but negotiate on market access, could serve as a template.

## **The “Noodle Bowl”**

Differences of opinion exist among the participants as to how best and to what extent the TPP will serve to harmonize trade rules among the parties. They have agreed to pursue a single set of TPP rules of origin, which will be key to achieving this goal. However, they are pursuing different approaches to developing a TPP tariff schedule. The United States has maintained that it is negotiating market access bilaterally and only with the TPP participants with which it does not have FTAs: Brunei, Japan, Malaysia, New Zealand, and Vietnam. Other participants have sought to negotiate plurilateral market access schedules. While the participants have agreed to conduct the tariff negotiations as they choose, they have agreed to develop a single TPP tariff schedule that will support the goal of facilitating trade. However, it is known that some participants seek to reopen the market access provisions of their prior FTAs with the United States or others. For example, Australia is known to seek a better market access for its sugar in the United States than it received in its FTA. Through TPA, or other vehicle, Congress may wish to make its views known about the architecture of the agreement.

## **Issues for Congress**

Congress has taken a strong interest in the TPP negotiations since the negotiations were launched in 2008. Hearings have been held, and many Members have expressed views on the negotiations through letters and consultations with the Administration and with stakeholder groups. As the negotiations proceed, a number of issues important to Congress are emerging.

## **Negotiating a “Comprehensive, High-Standard” Agreement**

An issue for U.S. policy makers in general, and Congress in particular, is whether the United States will be able to achieve its objective of creating a “comprehensive, high-standard”

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<sup>141</sup> USTR, “Statement by U.S. Trade Representative Michael Froman on Korea's Announcement Regarding the Trans-Pacific Partnership,” press release, November 29, 2013, <http://www.ustr.gov/about-us/press-office/press-releases/2013/November/Froman-statement-TPP-Korea>.

<sup>142</sup> Jeffrey J. Schott and Cathleen Cimino, *Should Korea Join the Trans-Pacific Partnership?*, Peterson Institute for International Economics, Policy Brief PB14-22, September 2014.

agreement that encompasses a broad spectrum of trade and trade-related issues. As the largest FTA negotiated by the United States, it brings together a large and expanding group of countries representing various levels of development. Likewise, with multiple chapters under negotiation, it is the most comprehensive agreement in terms of breadth and depth of commitment undertaken by the United States. At the same time, the United States and the other TPP partners are aiming for a comprehensive agreement to provide a structure for trade within the Asia-Pacific region in the 21<sup>st</sup> century, and to approach other issues not currently being addressed at the WTO.

Members of Congress have already presented differing views on which countries should be included in a TPP, and on what constitutes “high-standards” in such areas as worker rights, intellectual property rights, protection for pharmaceuticals, and investor rights. In addition, some Members of Congress have expressed an interest in broadening the negotiations to include issues such as exchange rates, which the Administration acknowledges as important, but has to date preferred to address through other venues.<sup>143</sup> Likewise, outside the United States, the course of the negotiations has revealed differences on the meaning of “high-standard” among the negotiating partners. This emerging debate may presage a vigorous debate within Congress on the TPP as the process proceeds and Members continue to weigh in with their views.

## **The Role and Timing of Trade Promotion Authority (TPA) and Congressional Trade Negotiating Objectives**

Any trade agreement that the United States reaches with TPP partners would have to be approved by Congress through the passage of implementing legislation, presumably under TPA procedures (see text box on TPA). The latest TPA expired on July 1, 2007, although the Obama Administration has proceeded to negotiate the proposed TPP as if TPA were in effect. It has consulted with Congress and followed TPA’s procedural steps. For example, former USTR Ron Kirk formally notified Congress of the Administration’s intention to enter into negotiations with the TPP countries on December 14, 2009, 90 days prior to beginning the negotiations, as stipulated under the expired TPA.

Although the Administration has been consulting Members and congressional staff, Congress, as a whole, formally has yet to weigh in in the form of negotiating objectives embedded in TPA authorizing statutes. In the past, these objectives have included reducing barriers to various types of trade (e.g., goods, services, agriculture, electronic commerce); protecting foreign investment and intellectual property rights; encouraging transparency, fair regulatory practices, and anti-corruption; ensuring that countries protect the environment and worker rights; providing for an effective dispute settlement process; and protecting the U.S. right to enforce its trade remedy laws. However, over the years, Congress has revised and expanded the negotiating objectives as policy issues have evolved and the global trading system has become more complex. In any renewal of TPA, Congress may wish to establish new negotiating objectives to reflect 21<sup>st</sup>-century trade policy, including issues currently under negotiation such as state-owned enterprises, regulatory coherence, digital technology, and trade in green technologies, among other areas. At the same time, the objectives would likely have to be flexible enough to allow the Administration to negotiate a “living agreement” that can change and be kept current with an evolving international trading system.

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<sup>143</sup> *Washington Trade Daily*, October 17, 2013, p. 3.

### Exchange Rates and TPP

Some Members of Congress are calling for “currency manipulation” to be addressed in the proposed TPP. In June 2013, 230 Representatives sent a letter to President Obama urging the Administration to address unfair exchange rate policies in the TPP.<sup>144</sup> In September 2013, 60 Senators sent a letter to the Treasury Secretary, Jacob Lew, and the U.S. Trade Representative, Michael Froman, asking them to address currency manipulation in the TPP and all future free trade agreements.<sup>145</sup> Both letters cite a December 2012 study by the Peterson Institute for International Economics (PIIE), which estimates that “currency manipulation” has caused the U.S. trade deficit to increase by \$200 billion to \$500 billion per year and the U.S. economy to lose between 1 million and 5 million jobs.<sup>146</sup> In July 2013, Congressman Levin released a specific proposal to address unfair exchange rate practices in the TPP.<sup>147</sup> Addressing “currency manipulation” is also identified as a principal negotiating objective in the TPA legislation introduced in the House and the Senate in January 2014 (H.R. 3830; S. 1900). As TPP negotiations progress, it is not clear to what extent negotiators are discussing exchange rate issues.

Generally, Member concerns about currency issues focus on the claim that certain countries are using, or have used in the past, various economic policies to lower the value of their currency in order to unfairly boost exports at the expense of other countries, including the United States. Traditionally, concerns have been raised about countries that have prolonged, sustained interventions in foreign exchange markets to artificially weaken the value of their currency, meaning that they are selling domestic currency in exchange for foreign currency. More recently, concerns have also been raised about the effects of expansionary monetary policy on exchange rate levels.

In the context of the TPP, congressional concerns appear to be focused on Japan. In 2013, the Central Bank of Japan embarked on a package of expansionary monetary policies, as part of a larger economic reform program nicknamed “Abenomics,” that aims to grow Japan’s economy and eliminate deflation (falling prices). Most economists agree that Japan’s expansionary monetary policies are focused on increasing aggregate demand, similar to the motivations for quantitative easing in the United States, rather than targeting a specific exchange rate value. That said, the change in monetary policy has contributed to a weakening in Japan’s currency, the yen, which fell by 40% against the dollar between mid-2012 and the end of September 2014.<sup>148</sup> Additionally, Japan has, in the past, intervened in currency markets, meaning it has sold yen in exchange for foreign currencies in order to decrease the value of the yen. Japan is believed to have last intervened in currency markets in 2011.

Although congressional concerns have been focused on Japan, analysts have also voiced concerns about the exchange rate practices of other TPP member countries. The PIIE study identifies two TPP countries—Malaysia and Singapore—as among the most significant “currency manipulators.”<sup>149</sup>

Given the effect that exchange rates can have on trade, some policy makers argue that addressing unfair exchange rate policies should be an integral part of a trade agreement to create a “level playing field,” even if such provisions would be novel in the context of a free trade agreement. The U.S. auto industry in particular has been supportive of efforts to address currency manipulation in TPP.<sup>150</sup> Proponents of including currency provisions in TPP argue that other efforts to address currency manipulation, such as through the International Monetary Fund (IMF), have not been fruitful and that other avenues, like trade agreements, need to be pursued.

Others argue that seeking to include currency issues in a trade agreement is not a straight-forward process and could

<sup>144</sup> Representative Mike Michaud, “Majority of House Members Push Obama to Address Currency Manipulation in TPP,” Press Release, June 6, 2013, <http://michaud.house.gov/press-release/majority-house-members-push-obama-address-currency-manipulation-tpp>.

<sup>145</sup> Senator Debbie Stabenow, “Sixty Senators Urge Administration to Crack Down on Currency Manipulation in Trans-Pacific Partnership Talks,” Press Release, September 24, 2013, [http://www.stabenow.senate.gov/?p=press\\_release&id=1171](http://www.stabenow.senate.gov/?p=press_release&id=1171).

<sup>146</sup> C. Fred Bergsten and Joseph E. Gagnon, “Currency Manipulation, the US Economy, and the Global Economic Order,” Peterson Institute for International Economics Policy Brief 12-25, December 2012, <http://www.iie.com/publications/interstitial.cfm?ResearchID=2302>.

<sup>147</sup> U.S. Representative Sander Levin, “U.S.-Japan Automotive Trade: Proposal to Level the Playing Field,” <http://www.piie.com/publications/papers/levin20130723proposal.pdf>.

<sup>148</sup> Federal Reserve.

<sup>149</sup> Bergsten and Gagnon, op. cit.

<sup>150</sup> For example, see Michael Stumo, “American Auto Industry Applauds Senate Currency Letter,” *Trade Reform*, September 25, 2013.

make the agreement more difficult to conclude. For example, there are different views about how currency issues could or should be addressed in trade agreements. Some have called for enforceable provisions, but there may be disagreement over how exchange rate disputes would be adjudicated, while others have called for cooperative frameworks to examine currency issues. There is also disagreement among economists about how to define currency manipulation and what benchmarks should be used.

Still others caution that there may be a number of reasons to refrain from taking action on exchange rate disputes. A key reason is that U.S. imports from countries with weak currencies may be less expensive than they would be otherwise, benefitting U.S. consumers and U.S. businesses that rely on inputs from abroad.

**Note:** This section prepared by Rebecca M. Nelson. For more information about current debates over exchange rates, see CRS Report R43242, *Current Debates over Exchange Rates: Overview and Issues for Congress*, by Rebecca M. Nelson, and CRS Report IF00045, *Debates over "Currency Manipulation" (In Focus)*, by Rebecca M. Nelson.

The timing of TPA may also have an impact on the negotiations and potential congressional consideration of the TPP. Observers have asserted that TPP partners will not engage in serious negotiations on the most sensitive issues without the assurance that U.S. commitments are credible and cannot be amended by Congress. Some officials from TPA partner countries have stated that TPA is necessary to conclude the TPP negotiations,<sup>151</sup> while others have been reluctant to remark on what they see as a domestic U.S. political process.<sup>152</sup> Meanwhile, some Members of Congress have suggested that they would like TPA as soon as possible and may not support TPP without timely passage of a TPA bill,<sup>153</sup> while others would like first to have a better understanding of the potential TPP provisions before considering TPA.<sup>154</sup>

On July 30, 2013, President Obama, in a speech, requested Congress reauthorize TPA. On January 8, 2014, bicameral legislation (H.R. 3830/S. 1900)—the Bipartisan Congressional Trade Priorities Act of 2014 (BCTPA)—was introduced by the chairman of the House Ways and Means Committee and the then-chairman and the ranking Member of the Senate Finance Committee. The current chairman of the Senate Finance Committee, Ron Wyden, has indicated that he would consider changes in the draft legislation, notably in measures to ensure greater accountability to Congress and to the public.<sup>155</sup>

## Institutional Issues

In addition, Congress may wish to consider the institutional structure of a future TPP agreement. It may wish to consider the manner in which the agreement can be expanded, or the terms to which it is willing to agree to expand to new members. As well as attracting new members, new content may be negotiated, or existing content renegotiated. In the manner of accession of new members, Congress may consider whether it would approve each new member, or whether U.S. approval would be handled in a manner similar to WTO accessions. In terms of content, Congress

<sup>151</sup> "No TPA, No TPP, Says Canada," *Washington Trade Daily*, October 10, 2014, p. 2.

<sup>152</sup> "Robb Says Basic TPP Deal Possible by Year's End, but Political Will Uncertain," *Inside U.S. Trade*, October 2, 2014.

<sup>153</sup> Letter from Dave Camp, Chairman of U.S. House of Representatives Committee on Ways and Means, et al. to Michael Froman, United States Trade Representative, July 17, 2014, [http://waysandmeans.house.gov/uploadedfiles/tpp\\_tpa\\_letter\\_final.pdf](http://waysandmeans.house.gov/uploadedfiles/tpp_tpa_letter_final.pdf).

<sup>154</sup> Ways and Means Committee Democrats, "Levin Issues Report on TPP, Calls for Bipartisan Consultative Process," press release, September 18, 2014, <http://democrats.waysandmeans.house.gov/press-release/levin-issues-report-tpp-calls-bipartisan-consultative-process>.

<sup>155</sup> "Wyden Says Substance Will Drive Timeline of New TPA Proposal," *International Trade Reporter*, April 17, 2014.

may also wish to consider whether the TPP, if concluded, would have a Secretariat or other body that could serve as a venue for continuing negotiations.

## **Relationship with the Multilateral System**

A successfully concluded TPP agreement may shape the future course of multilateral trade liberalization. After 10 years of negotiations, the Doha Round of multilateral trade negotiations is at an impasse, and WTO members are developing new approaches to address global trade issues.<sup>156</sup> TPP may offer an opportunity for a group of countries dedicated to concluding a comprehensive, high-standards FTA to break new ground on issues thus far not negotiated at the multilateral level.

Past FTAs, such as NAFTA, incorporated new trade policy ideas, such as dispute settlement and intellectual property rights, that were concurrently being negotiated in the Uruguay Round. NAFTA was approved first, and the approval of NAFTA among Canada, Mexico and the United States helped push the Uruguay Round to conclusion. Today, the approval of a comprehensive, high-standard TPP agreement could signal to recalcitrant members of the WTO that trade liberalization can proceed without them and might spur action at the multilateral level.

However, the world trading system is much different than it was in the early 1990s when NAFTA signatories (United States and Canada) made up half of the so-called “Quad-countries” (United States, Canada, the European Union, and Japan) that decided the Uruguay Round. Developing countries, such as Brazil, India, and China, that now exercise their interests in the WTO, may be more assertive in pursuing their own interests. Yet, as an alternative venue promoting trade liberalization at the time when the WTO is not seen to be doing so, it may attract additional countries to the negotiations.

## **The Potential Impact of the TPP on U.S. Trade Policy**

The U.S. pursuit of the TPP and the possible outcome of the negotiations raise other questions regarding its possible impact on the status and shape of current and future U.S. trade policy. For example, how will the TPP talks and potential final agreement relate to the recently launched U.S.-EU FTA negotiations (Trans-Atlantic Trade and Investment Partnership or T-TIP)?<sup>157</sup> If both negotiations concluded successfully could they be eventually be merged?

Similarly, the TPP raises the issue of the United States and the future of the WTO as a major force for trade liberalization. Some may argue, for example, that the United States has signaled the death knell of future rounds of multilateral agreements in favor of regional pacts. Others might assert that the TPP could serve as a building block for a more viable multilateral trade system that responds to trade challenges of the 21<sup>st</sup> century. Some may even say that the TPP may become the predominant force for trade liberalization going forward, that is, if it can be agreed to by the current parties.

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<sup>156</sup> Preliminary discussions for a plurilateral agreement to update the commitments in the General Agreement on Trade in Services have been held.

<sup>157</sup> For more information on the TTIP negotiations, see CRS Report R43158, *Proposed Transatlantic Trade and Investment Partnership (T-TIP): In Brief*, by Shayerah Ilias Akhtar and Vivian C. Jones.

Another issue for possible consideration is: What would be the impact on U.S. trade policy if the TPP negotiations are not completed successfully or are delayed indefinitely? Some could argue that such an outcome would indicate that it is not feasible to negotiate a comprehensive set of rules with a diverse group of countries and that the United States would have to tailor its ambitions. In addition, some might assert that such an outcome would signify a temporary, if not permanent setback to the notion of a Free Trade Area of the Asia-Pacific (FTAAP). Still others may conclude that such result could force the United States to retreat from negotiating trade agreements altogether.

## Conclusion

The potential Trans-Pacific Partnership agreement has strategic policy implications for the United States, including with respect to trade policy, but the substance of the proposed agreement and its future remain undecided. The agreement is ambitious in at least three ways: (1) in terms of its size—it would be the largest U.S. FTA by trade flows and could expand in a region that represents over half of all U.S. trade; (2) the scope and scale of its liberalization—the negotiating partners have expressed an intent to comprehensively reduce barriers in goods, services, and agricultural trade as well as rules and disciplines on a wide range of topics including new policy issues that neither the WTO nor existing FTAs yet cover; and (3) its flexibility—this “living agreement” has been and may continue to be expanded in terms of its membership and its trade and investment disciplines.

Due to this level of ambition, however, achieving such an agreement may be difficult. Differences in opinion exist, both domestically and among the negotiating partners, on precisely what form the agreement’s provisions should take. A broad range of U.S. interests groups view the TPP as a way to “correct” flaws in previous U.S. FTAs, but changes that some groups consider improvements to U.S. trade policy others see as unwarranted intrusions into public policy, or as factors that contribute to economic insecurity for some Americans. Even challenges with “20<sup>th</sup>-century” trade issues, such as market access for goods, have yet to be resolved among the TPP partners.

Yet, the partner countries have expressed their commitment to achieving this ambitious agreement and the negotiators remain positive about the progress being made. This group of countries has self-selected into the negotiations presumably because it sees the TPP as a catalyst to greater economic growth and prosperity, especially if it is expanded to include other countries. In addition, the large network of existing FTAs among the members could be seen as an indicator of their willingness to cooperate on trade issues and may imply that some of the challenging issues have already been addressed.

## **Author Contact Information**

Ian F. Fergusson, Coordinator  
Specialist in International Trade and Finance  
ifergusson@crs.loc.gov, 7-4997

Brock R. Williams  
Analyst in International Trade and Finance  
bwilliams@crs.loc.gov, 7-1157

Mark A. McMinimy  
Analyst in Agricultural Policy  
mmcminimy@crs.loc.gov, 7-2172

## **Acknowledgments**

William H. Cooper and Remy Jurenas, former CRS specialists, contributed to previous versions of this report.