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The Trans-Pacific Partnership (TPP): In Brief

Ian F. Fergusson
Specialist in International Trade and Finance

Mark A. McMinimy
Analyst in Agricultural Policy

Brock R. Williams
Analyst in International Trade and Finance

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Summary

The Trans-Pacific Partnership (TPP) is a proposed free trade agreement (FTA) among 12 Asia-Pacific countries, with both economic and strategic significance for the United States. If approved, it would be the largest FTA in which the United States participates. The 12 countries announced the conclusion of the TPP negotiations and released the text of the agreement in late 2015, after several years of ongoing talks. Trade ministers from the TPP countries signed the final agreement on February 4, 2016, but Congress would need to pass implementing legislation for the agreement to enter into force for the United States. Such legislation would be eligible to receive expedited legislative consideration under the recent grant of Trade Promotion Authority (TPA), P.L. 114-26, if Congress determines the Administration has advanced the TPA negotiating objectives, and met various notification and consultation requirements. TPP negotiating parties include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

Through the TPP, the participating countries seek to liberalize trade and investment and establish new rules and disciplines in the region beyond what exists in the World Trade Organization (WTO). The FTA is envisioned as a living agreement that will be open to future members and may become a vehicle to advance a wider Asia-Pacific free trade area. It is a U.S. policy response to the rapidly increasing economic and strategic linkages among Asian-Pacific nations and has become the economic centerpiece of the Administration's "rebalance" to the region. The TPP has slowly evolved from a more limited agreement among four countries concluded in 2006 into the current 12-country FTA agreement, with the United States joining the negotiations in 2008. Japan, the most recent country to participate, joined the negotiations in 2013. This significantly increased the potential economic significance of the agreement to the United States, because Japan is the largest economy and trading partner without an existing U.S. FTA among TPP negotiating partners (thus having greater scope for trade liberalization with the United States). The United States already has FTAs with 6 of the 11 other countries participating. Malaysia and Vietnam also stand out among the TPP countries without existing U.S. FTAs, given the rapid growth in U.S. trade with the two nations over the past three decades and substantial presence of state-owned enterprises (SOEs) that will be affected by the TPP's SOE provisions.

Views on the potential impact of the agreement vary. Proponents argue that the TPP has the opportunity to boost economic growth and jobs through expanded trade and investment opportunities with negotiating partners that currently make up 37% of total U.S. goods and services trade, involves writing new trade rules and disciplines, and could deepen U.S. trade and investment integration in what many see as the world's most economically vibrant region. The agreement would eventually eliminate all tariffs on manufactured products and most agricultural goods. It also includes new trade disciplines on issues such as digital trade barriers, state-owned enterprises (SOEs), and regulatory coherence, among other provisions. Opponents voice concerns over potential job loss and competition in import-sensitive industries, and how a TPP agreement might limit U.S. ability to regulate in areas such as health, food safety, and the environment, among other concerns.

The Obama Administration, joined by many analysts as well as many policymakers in the region, has argued that the strategic value of a potential TPP agreement parallels its economic value, contending that the agreement would strengthen U.S. allies and partners and reaffirm U.S. economic leadership in the region. The President has repeatedly highlighted the importance of maintaining U.S. leadership in crafting global trade rules, notably with reference to potentially alternative Chinese initiatives. China is not a party to the TPP. Others argue that past trade pacts have had a limited impact on broad foreign policy dynamics.

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Overview

The Trans-Pacific Partnership (TPP) is a proposed free trade agreement (FTA) among 12 Asia-Pacific countries, which the Obama Administration casts as comprehensive and high standard, with economic and strategic significance for the United States.[1] The 12 countries (including the United States) announced the conclusion of the TPP negotiations and released the text of the agreement in late 2015. Trade ministers from the TPP countries signed the final agreement text on February 4, 2016, but Congress would need to pass implementing legislation for the agreement to enter into force for the United States.[2] It would be eligible to receive expedited legislative consideration under Trade Promotion Authority (TPA), P.L. 114-26, if Congress determines the Administration has advanced the TPA negotiating objectives, and has met various notification and consultation requirements.[3]

Through the TPP, the participating countries seek to liberalize trade and investment and establish new rules and disciplines in the region beyond those that already exist in the World Trade Organization (WTO). The FTA is envisioned as a living agreement open to future members and new issues and may become a vehicle to advance a wider Asia-Pacific free trade area. Indonesia, the Philippines, and South Korea have recently indicated their interest in joining the TPP. It is also a U.S. policy response to the rapidly increasing economic and strategic linkages among Asian-Pacific nations and has become the economic centerpiece of the Administration's "rebalance" toward the region. The United States has existing FTAs with 6 of the countries participating in the TPP.[4]

Views on the likely impact of the agreement vary. Proponents argue that the TPP will boost economic growth and jobs through expanded trade and investment with countries currently accounting for 37% of total U.S. trade, and deepen U.S. trade and investment integration in what many see as the region with the world's greatest economic opportunities. Proponents also argue the agreement allows the United States to "write the rules" of trade and investment in the region, including new disciplines on issues such as digital trade barriers, state-owned enterprises (SOEs), and regulatory coherence, and to show its strategic engagement and economic leadership in the Asia-Pacific region. Opponents voice concerns over possible job losses and competition in import-sensitive industries. They also raise concerns that the proposed TPP will limit the U.S. government's ability to regulate in areas such as health, food safety, and the environment.

Throughout the negotiations on TPP, certain aspects of the agreement have proven controversial. These include select market access issues (such as on dairy and other agricultural products, autos, and textiles and apparel) as well as the level of intellectual property protection, the scope and enforcement of environment and worker rights provisions, the treatment of SOEs, investor-state dispute settlement, access to government procurement, and the potential inclusion of provisions on currency valuation and exchange rates. This report briefly summarizes some of the key

[1] TPP negotiating parties include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

[2] For more information on the timeline of potential congressional consideration of TPP, see CRS In Focus IF10297, *The Trans-Pacific Partnership (TPP)-Trade Promotion Authority (TPA) Timeline*, by Ian F. Fergusson.

[3] For more information on TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson; and CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

[4] U.S. FTA partners in the TPP negotiations are Australia, Canada, Chile, Mexico, Peru, and Singapore.

provisions listed generally in alphabetical order. Additional analysis of the agreement will be forthcoming.

Economic Significance[5]

The potential economic impact of the TPP agreement will depend on a number of factors, including the extent of trade liberalization achieved in the agreement, as well as the current level and potential growth of trade and investment among TPP members. On both measures, the TPP appears significant given that it would be the largest U.S. FTA by trade flows ($905 billion in U.S. goods and services exports and $980 billion in imports in 2014), and would eventually eliminate all tariffs on manufactured products and most agricultural goods. From the U.S. perspective, a significant share of this liberalization has already occurred due to the existing U.S. FTAs with 6 of the 11 TPP partners.

Japan's entry into the negotiations increased the potential economic significance of the agreement. Among U.S. negotiating partners in the TPP, Japan is the largest economy and trading partner without an existing U.S. FTA (thus having greater scope for trade liberalization with the United States). In 2014, Japan was the United States' fourth-largest goods export ($67 billion) and import ($134 billion) market. As high-income countries, U.S.-Japan trade differs considerably from U.S. trade with most other TPP partners without U.S. FTAs, which generally are not high-income nations. As a result, many U.S. industries are actively interested in Japan's participation in the TPP.

Malaysia and Vietnam also stand out among the TPP countries without existing U.S. FTAs, given the rapid growth in U.S. trade with the two nations over the past three decades, and the potential for future growth. Both economies have grown steadily and rapidly since the 1980s. Moreover, Malaysia's and Vietnam's average applied tariffs on imports are 6.1% and 9.5%, respectively, two of the highest levels among TPP members.[6] Both nations also have a substantial presence of SOEs in their economies, which may be affected by TPP outcomes among other trade barriers of potential interest to the United States.

TPA requires that the U.S. International Trade Commission (ITC) prepare a report that estimates the economic impact of the final TPP agreement within 105 days of its signing.[7] Other studies estimating the agreement's economic impact have been released since the conclusion of the negotiations, some receiving considerable attention. An updated study by the Peterson Institute for International Economics estimates that the United States stands to gain $131 billion in annual real income from TPP driven primarily by reductions in non-tariff barriers to goods and services trade.[8] Meanwhile, a new study by researchers at Tufts University predicts the agreement will actually lead to a slight decline in annual U.S. GDP growth and a loss of 770,000 jobs split amongst all TPP participants.[9]

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[5] See also, CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

[6] Tariff data from WTO Tariff Profiles 2015.

[7] The ITC has prepared a similar report for past U.S. FTAs. For example, the KORUS FTA report can be found at http://www.usitc.gov/publications/pub3949.pdf.

[8] Peter A. Petri and Michael G. Plummer, "The Economic Effects of the TPP: New Estimates," in *Assessing the Trans-Pacific Partnership: Market Access and Sectoral Issues*, Peterson Institute for International Economics, PIIE Briefing 16-1, February 2016, http://www.iie.com/publications/print.cfm?ResearchId=2909&doc=int.

[9] Jeronim Capaldo and Alex Izurieta, *Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership*, Global Development and Environment Institute, Working Paper No. 16-01, January 2016, (continued...)

Economic modeling inevitably requires a number of assumptions that can influence results, and critiques have been made against both studies. The Tufts study has drawn particular criticism as an unconventional framework for analyzing trade agreements, whereas Computable General Equilibrium (CGE) models, such as that used in the Peterson study are standard in trade policy analysis. There is general consensus that these modeling exercises are more useful in examining the direction of benefits and sectors that may be impacted, rather than in providing precise figures for economic outcomes.

Strategic Implications

In addition to its potential economic implications, the TPP has a number of strategic implications for U.S. trade policy and broader U.S. geopolitical interests in the Asia-Pacific region.[10] The Obama Administration has argued that the strategic value of a potential TPP agreement parallels its economic value, contending that the agreement would strengthen U.S. allies and partners and reaffirm U.S. economic leadership in the region.

Many Asian policymakers—correctly or not—could interpret a failure of TPP in the United States as a symbol of declining U.S. interest in the region and inability to assert leadership. Some argue that the geopolitical costs of TPP failure could be significant. For instance, many observers argue that China is attempting to create a regional order that reduces U.S. presence and power. In this line of reasoning, the TPP could serve as a counter to growing Chinese economic and political influence. This could in turn imply that failure to conclude TPP could, in effect, allow China to shape regional rules of commerce and diplomacy through its own trade and investment initiatives, potentially creating regional rules and norms less beneficial for U.S. interests.[11] Others argue that past trade pacts have had a limited impact on broad foreign policy dynamics, that U.S. and Chinese economic initiatives are not necessarily competitors, and that the TPP should be considered primarily or solely for its potential impact on the U.S. economy.

U.S. participation in TPP negotiations also serves several strategic goals in U.S. trade policy, most notably providing direction for and potentially revitalizing the rules-based global trading system. The TPP arguably continues and expands a U.S. trade policy of negotiating, in the Administration's words, "comprehensive and high standard" bilateral and regional FTAs to open markets and address new trade barriers, and potentially spark or otherwise influence multilateral negotiations in the WTO and in other trade negotiations. The TPP may provide the United States with the opportunity to project its trade interests by establishing disciplines that build on existing U.S. FTAs and multilateral agreements, potentially updating trade rules to reflect the realities of modern international commerce.

In addition, the TPP may present an alternative to less comprehensive models of FTAs constructed by other countries, potentially including the Regional Comprehensive Economic Partnership (RCEP), which does not include the United States.[12] These agreements, even if open

(...continued)

http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf.

[10] For more information, see CRS Report R44361, *The Trans-Pacific Partnership (TPP): Strategic Implications*, coordinated by Ben Dolven and Brock R. Williams.

[11] For instance, see Takashi Terada, "Japan and the TPP Conclusion: Regional Order, Negotiations, and Domestic Adjustment," *The Asan Forum*, October 23, 2015, http://www.theasanforum.org/japan-and-the-tpp-conclusion-regional-order-negotiations-and-domestic-adjustment/#a5.

[12] RCEP is an ongoing FTA negotiation including the 10 members of the Association of Southeast Asian Nations (ASEAN) and 6 of their FTA partners including Australia, China, India, Japan, New Zealand, and South Korea. Six (continued...)

to U.S. participation, could be seen as disadvantageous to U.S. businesses and workers because they often exclude or have less extensive provisions on agriculture, services, investment, and intellectual property rights, which some see as among the most important FTA provisions for certain U.S. sectors. The President has repeatedly highlighted the importance of maintaining U.S. leadership in crafting global trade rules, notably with reference to potentially alternative Chinese initiatives.[13] Some argue, however, that the various FTA proposals in the region, including those backed by China, may be complementary rather than in competition with U.S. initiatives, and ultimately could serve as building blocks for the future expansion of TPP or a comprehensive Free Trade Area of the Asia-Pacific (FTAAP).[14]

Specific Issue Areas

There are 30 chapters in the TPP agreement, ranging from market access (such as the elimination of tariff and nontariff barriers and quotas on agriculture), to specific rules on various trade-related issues (such as intellectual property rights, regulatory issues, and labor and environmental standards).[15] Summarized below are some of the key issues in the TPP.

Market Access

A fundamental element of U.S. and other FTAs is a commitment among FTA partners to eliminate most, if not all, tariffs and quotas on their trade in industrial goods and agriculture. Current average most-favored-nation (MFN) tariff levels for TPP countries range from 0% to nearly 10%. The United States negotiated market access in TPP on a bilateral basis, so tariff elimination schedules on U.S. imports vary by country. According to the released elimination schedules, tariffs on all manufactured goods would be eliminated. Some of these tariffs would be removed immediately while others would be phased out over longer periods, up to a maximum of 30 years. For agricultural goods, tariffs and quotas on some of the most sensitive products would remain in place. On average across the 11 TPP partner countries, approximately 90% of U.S. tariff lines and 88% of partner country tariff lines would be duty-free when the agreement enters into force, with a lower average (86% for U.S. imports and 84% for U.S. exports) across the five countries without an existing U.S. FTA (Brunei, Japan, Malaysia, New Zealand, and Vietnam).[16] Eventually, on average, approximately 99% of both U.S. and TPP partner country tariff lines will be duty-free. The tariff schedules included in the agreement detail the degree and timeline of tariff elimination for each country. Other TPP provisions affecting market access for industrial goods and agriculture are discussed below.

(...continued)

countries are also in the TPP.

[13] White House, "Statement by the President on the Trans-Pacific Partnership," press release, October 5, 2015, https://www.whitehouse.gov/the-press-office/2015/10/05/statement-president-trans-pacific-partnership.

[14] Simon Lester, *Chinese Free Trade is No Threat to American Free Trade,* Cato Institute, April 22, 2015.

[15] Tariff schedules and the text of the agreement can be accessed at https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text.

[16] Based on CRS calculations; many U.S. tariffs are already zero.

Agricultural Products[17]

The TPP agreement reached in October 2015 would appear to significantly improve market access for many U.S. food and agricultural products, potentially enhancing U.S. competitiveness in a number of TPP markets, while also providing TPP partners with greater access to U.S. product markets.

Non-U.S. FTA partners Japan, Vietnam, and Malaysia, likely offer the greatest potential for expanding U.S. farm and food exports. Japan is considered the standout opportunity in this group, owing to its highly protected agricultural markets, large population, and high per-capita GDP. Key export expansion opportunities for U.S. food and agriculture interests will be phased in over a period of years, if not decades, and safeguard measures allow for additional tariffs to be imposed on certain sensitive products if imports exceed certain thresholds.

Without U.S. implementation of TPP, U.S. producers could lose competitive advantage in some markets. This could occur as a result of existing preferential tariff arrangements—such as Australia's FTA with Japan—or by ratifying an agreement similar to TPP without U.S. participation. Also, the EU, though not a participant in TPP, is negotiating FTAs with Japan, Malaysia, and Vietnam and, if successful, may enhance its competitive position in those markets.

The list that follows includes some of the many product-specific changes in the agreement.

- **Beef.** Lowers Japanese tariffs on fresh, chilled, and frozen beef from 38.5% to 9% over 16 years, and would lower tariffs on other beef products as well, while Vietnam would eliminate such tariffs over three to eight years. Eliminates U.S. tariffs on beef and beef products that range as high as 26.4% in no more than 15 years and in fewer than 10 years in most cases.
- **Pork.** Cuts Japanese tariff of 4.3% on fresh, chilled, and frozen pork cuts to 2.2% immediately, phasing out the residual over nine years. A separate duty on pork under Japan's "gate price system,"[18] which acts as a minimum import price, would be lowered immediately to 125 (eventually to 50) yen per kilogram, from 482 yen now, but subject to a safeguard. Immediately eliminates U.S. tariffs on such products and Vietnamese tariffs as high as 34% within 10 years.
- **Poultry.** Allows incremental increases to Canada's highly protected poultry and egg markets over five years via new duty-free tariff-rate quotas (TRQs) ranging from 1.5%-2.3% of domestic production. Thereafter, the quotas would be raised moderately each year until plateauing in year 19. Eliminates Vietnamese tariffs (currently up to 40%) within 13 years and U.S. tariffs (currently up to 18.6% *ad valorem* equivalent) within 10 years.
- **Dairy.** Allows incremental additional access to Canada's highly protected dairy markets amounting to 3.25% of its annual output under TRQs phased in over five years, with moderate annual increases thereafter. Increases Canadian TPP-wide TRQs for products, including milk and butter, for between 14 and 19 years, which then remain fixed. In-quota dairy products would enter Canada duty free. Eliminates Canada's over-quota tariff of 208% on whey powder in annual

[17] For additional perspective on TPP and U.S. agriculture see CRS In Focus IF10301, *The TPP Agreement: What's in It for U.S. Agriculture?*, by Mark A. McMinimy. In addition, the USDA has compiled market access summaries on various commodities, see http://www.fas.usda.gov/data/tpp-benefits-specific-agricultural-commodities-and-products.

[18] For additional detail on the operation of Japan's "gate price system" for pork, see http://webarchives.cdlib.org/sw1tx36512/http://www.ers.usda.gov/Publications/LDP/mar03/LDPM10501/.

reductions over 10 years. Eliminates numerous Japanese tariff lines on cheese imports within 16 years and on whey within 21 years. Gradually phases out U.S. tariffs and establishes U.S. TRQs for dairy products from Australia and New Zealand that would be increased annually. Existing U.S. preferential access for Australian dairy products under the U.S.-Australia FTA would be transferred to perpetual TRQs. Establishes new U.S. TRQs for Canadian dairy products that would be raised gradually until year 19 and fixed thereafter.

- **Rice.** Creates a new Japanese duty-free quota for U.S. rice at an initial level of 50,000 tons, rising to 70,000 tons in year 13, and requires Japan to allow a broader range of domestic entities to participate in rice tenders. Japanese officials indicate that the "minimum mark-up" Japan imposes on rice imports—equivalent to a 15%-20% duty according to USA Rice—would continue to be applied to all imports. Eliminates U.S. rice product tariffs within 15 years.
- **Cotton.** Eliminates U.S. cotton tariffs (up to $0.314 per kg) by 2022.
- **Sugar.** Establishes new U.S. TRQs for sugar and sugar-containing products totaling 86,300 tons, with 65,000 tons allocated to Australia, 19,200 tons to Canada, and the residual split between Japan, Malaysia, and Vietnam. Both Australia's and Canada's TRQs include the potential for further expansion. Provides new Japanese TRQs for sugar and sweetener-related processed products on a duty-free or preferential-tariff-rate basis, including chewing gum, chocolates and products containing chocolate, confectionery goods and other such products, and eliminates tariffs on various sweetener products over time.
- **Tobacco.** Eliminates U.S. tobacco tariffs (as high as 350%) within 10 years, Japanese smoking tobacco and cigar tariffs over 11 years, Malaysian tobacco and tobacco product tariffs over 16 years, and Vietnamese blended tobacco, cigar, and tobacco product tariffs over 16 years. Creates a Vietnamese TRQ of 500 metric tons for unmanufactured tobacco that increases gradually Eliminates in-quota tariffs on unmanufactured tobacco over 11 years and on tobacco leaf in 21 years.

Autos

Eliminates tariffs on autos and auto parts in TPP countries over various phase-out periods, including the 2.5% U.S. auto and 25% U.S. truck tariffs over 25 and 30 years, respectively, with Japan-specific safeguards in case of import surges. Special provisions target U.S.-Japan trade, requiring Japan to address nontariff barriers relating to transparency and distribution among other issues.

Textiles and Apparel[19]

Eliminates all TPP country import tariffs on textile and apparel products over various phase-out periods. Better access to the U.S. market has been a key interest for Vietnam, which would be granted an earned import allowance exempting, up to a given threshold, certain U.S. apparel imports from Vietnam from the TPP rule of origin, contingent on a specific quantity of Vietnamese imports of certain U.S. fabrics.

[19] For more information see CRS Report R42772, *U.S. Textile Manufacturing and the Trans-Pacific Partnership Negotiations*, by Michaela D. Platzer.

Customs and Trade Facilitation

Access to foreign markets depends on facilitating the movement of goods and services across borders. TPP includes commitments on efficient release of goods, handling of express shipments, electronic processing of customs documentation, and inspections based on risk-management techniques, as well as enhanced transparency.

Digital Trade/E-Commerce

TPP contains language that would prohibit countries from blocking cross-border flows of data over the Internet, a primary objective of high technology companies opposed to localization requirements that require data or servers to be located in-country. E-commerce chapters have traditionally provided for nondiscriminatory treatment of digital products.

- **Provisions.** Bars customs duties on digital products. Adopts and maintains consumer protection laws against online fraud, measures to stop unsolicited online commercial messages (spam), and protecting online privacy. Prohibits forced disclosure of software source code with governments or commercial rivals. Prohibits forced localization of data centers, and requires that parties "allow the cross border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of the covered person." Encourages cooperation on cybersecurity and assistance to SMEs.
- **Exceptions.** Allows data localization requirements and limits on data transfer under limited circumstances. Financial services are not covered, but have explicit provisions on data flows in the financial services chapter (see below).

General and Institutional Provisions

General and institutional provisions that broadly apply to the agreement include:

- **Accession.** Includes language addressing how countries may accede to the agreement. Such accession is potentially open to any country but ultimately requires the consensus of each of the current parties and any necessary domestic legal procedures.
- **Dispute Settlement.** Establishes dispute settlement mechanisms by which TPP commitments are enforced. All aspects of the agreement are subject to state-state dispute settlement unless specifically excepted. A separate investor-state dispute settlement (ISDS) applies to certain investment and financial services provisions.
- **Entry into Force.** Requires ratification by all 12 TPP countries within two years of signing for the agreement to enter into force, or, after two years, requires ratification of six countries accounting for 85% of TPP GDP, a condition that would require both U.S. and Japanese participation. Congress must pass implementing legislation for the agreement to apply to the United States.
- **TPP Commission/Living Agreement.** Similar to past U.S. FTAs, creates a senior-level TPP Commission to administer the accession process of new countries and consider potential amendments to the agreement. Requires consensus among the parties and adherence to necessary domestic legal procedures for changes.

Government Procurement

Government procurement disciplines aim to ensure transparent, predictable, nondiscriminatory treatment toward domestic and foreign firms when a covered government entity makes purchasing decisions above a certain threshold. They provide for an open tender process, evaluated under clear and transparent rules, and a mechanism to review or appeal a decision. They provide that technical specifications of a tender are flexible and nondiscriminatory, based on international standards where applicable, to assure nondiscriminatory evaluation.

- **Access.** The United States gains new reciprocal access to the procurement markets of Malaysia, Brunei, and Vietnam with some exceptions and transitional periods. The United States and the other eight countries of the TPP already have made reciprocal commitments under the WTO and bilateral FTAs. Canadian companies can participate in procurements by six major regional U.S. power authorities (such as the Tennessee Valley Authority).
- **Tenders.** The United States, Canada, and Mexico have agreed to harmonize the tendering procedures and procurement thresholds of the North American Free Trade Agreement (NAFTA) with the TPP.
- **Buy American.** Exempts TPP firms from Buy American provisions. However, transportation and infrastructure-related Buy America, Berry Amendment, and other restricted defense and agriculture procurements would continue to be excluded. New "buy local" provisions would not apply to TPP countries. U.S. commitments exclude state and local government procurement.

Intellectual Property Rights (IPR)[20]

Provisions governing IPR protect innovations in various forms. TPP provisions seek to boost the level of IPR protections beyond current WTO provisions in the 1994 Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, in areas such as patents, copyrights, trademarks, and trade secrets. Some U.S. FTAs differ in the scope and strength of their IPR provisions based on the economic development of the FTA partner country. Determining the transition mechanism for developing countries with certain IPR obligations in the TPP was reportedly a significant challenge, intersecting with concerns, for example, about access to medicines. Transition periods vary by country and provision, ranging up to 10 years with possible additional extensions for Vietnam at the discretion of the parties through the TPP Commission.

- **Biologics.** Provides countries a choice between an eight-year data exclusivity period for biologic medicines or, alternatively, at least five years with possible additional measures that could "deliver a comparable market outcome."
- **Pharmaceutical Patents.** Requires countries to provide a five-year data exclusivity period for pharmaceuticals, patent linkage, and patent term extension in their domestic law, and an additional three years of data exclusivity for new clinical information for an existing drug covering a new indication, formulation, or administration. Includes phase-in periods for developing countries to adopt these provisions and allows countries to take measures to protect public health consistent with the WTO TRIPs agreement.

[20] For more information, see CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

- **Copyright.** Increases copyright terms to 70 years with phase-in periods for countries currently providing 50 years of protection. Includes civil and criminal penalties for circumventing TPM (technological protection measures), and prohibits selling devices and services for breaking TPM with exceptions for non-infringing uses. Requires criminal penalties for camcording in movie theatres. Includes nonbinding language encouraging countries to achieve appropriate balance between users and rights-holders in copyright systems—known as "fair use" in the United States. Adopts U.S.-style "notice and takedown" provisions to address Internet Service Provider (ISP) liability. For specific countries, allows certain existing alternative systems.
- **Trademarks.** Requires *Ex Officio* authority for customs agents to seize counterfeit and pirated goods. Provides discretion to authorities to seize "in transit" goods or share information concerning such goods with the country of final destination and to seize goods with "confusingly similar" trademarks. Provides disciplines on the use of geographical indications.
- **Trade Secrets.** Requires criminal penalties for those gaining unauthorized access to a computer system. Countries may retain provisions relating to good faith law disclosures by whistle-blowers.

Investment[21]

In addition to provisions governing goods and services, U.S. FTAs include provisions governing investment flows based on the model U.S. Bilateral Investment Treaty (Model BIT), and typically include measures related to nondiscriminatory treatment, minimum standard of treatment, rules on expropriation, and prohibitions on performance requirements, among others.

- **Minimum Standard of Treatment.** Defines minimum standard of treatment and clarifies that an investor cannot claim a breach of minimum standard of treatment by showing a frustration of expectation.
- **Screening Mechanisms.** Establishes preferential monetary screening thresholds for TPP countries maintaining review regimes for significant or sensitive investments. Malaysia is allowed to retain existing "best interest" screening mechanism for financial services investment.
- **Exceptions.** Reaffirms a country's right to regulate in the public interest, including to promote prudential or financial stability and protect public health, safety, and the environment; includes an explicit recognition of the right of public health authorities to adopt tobacco control measures. Permits the imposition of short-term capital controls for balance of payments reasons. Allows denial of benefits to shell companies, companies which lack substantial business interests, from using the provisions of the agreement.
- **Investor-State Dispute Settlement (ISDS).** Allows private foreign investors to seek international arbitration against host governments to settle claims over alleged violations of the investment provisions. Allows governments to decline to accept ISDS challenges over tobacco control measures. Provides procedures to

[21] For more information, see CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar; and CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss.

allow for transparency of arbitral proceedings, submission of amicus curiae briefs by interested stakeholders, binding joint interpretations, expedited review of frivolous claims and possible awards of attorney fees to the respondent government, joint interpretations of TPP parties binding on the tribunals, interim review of an award by disputing parties, and challenges to tribunal awards.

Labor and Environment[22]

Labor and environment provisions address concerns over the protection of worker rights and the environment that may be affected by FTAs. Such provisions have evolved in U.S. FTAs. Originally included as side-letters in NAFTA with their own dispute settlement mechanisms, TPP and more recent U.S. FTAs include these provisions within the body of the agreement subject to the same dispute settlement procedures as other aspects of the agreement. TPP requires parties to affirm obligations, and adopt and enforce laws consistent with relevant international labor principles and certain environmental agreements. Countries shall not fail to enforce labor and environmental laws in a manner affecting trade and investment nor waive nor derogate from such laws to attract trade and investment.

- **Labor.** Affirms International Labor Organization (ILO) core labor principles to adopt and maintain laws consistent with internationally recognized labor standards. Includes obligations to adopt and maintain laws and practices related to "acceptable conditions of work." Sets out separate compliance agreements with Vietnam, Malaysia, and Brunei, countries of particular concern for the Unites States in terms of labor protections. Discourages importation of products produced by forced or compulsory labor.
- **Environment.** Affirms commitments to implement multilateral environmental agreements to which TPP countries are a party and includes specific obligations for agreements to which all members are a party.[23] Obligates countries to address illegal trade in flora and fauna in their own countries. Prohibits the "most harmful" fisheries subsidies and includes commitments on sustainable use of biodiversity, conservation and management of fisheries, and liberalizes trade in environmental goods and services.

Side Agreement on Exchange Rates[24]

For some Members of Congress, a key issue in the TPP negotiations has been how to combat "unfair" currency practices of other countries. The June 2015 TPA included, for the first time, principal negotiating objectives addressing currency manipulation, calling on negotiators to seek related provisions. Concurrent with the TPP text release, the TPP country monetary authorities released a declaration on unfair currency practices with three parts:[25]

- **Commitment to Avoid Manipulation:** Reaffirms IMF commitments to avoid manipulating exchange rates to gain an unfair competitive advantage, and commits countries to exchange rate policies that reflect underlying

[22] For more information, see CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Mary Jane Bolle and Ian F. Fergusson, and CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

[23] Montreal Protocol on Ozone Depletion, the Montreal Protocol on Substances that Deplete the Ozone Layer, the International Convention for the Prevention of Pollution from Ships (MARPOL), and the UN Convention on Trade in Endangered Species (CITES).

[24] Section prepared by Rebecca Nelson, Specialist in International Trade and Finance, x7-6819. For more on currency, see CRS In Focus IF10049, *Debates over "Currency Manipulation"*, by Rebecca M. Nelson.

[25] See Department of the Treasury website: http://www.treasury.gov/initiatives/Pages/joint-declaration.aspx.

economic fundamentals, to avoid persistent exchange rate misalignments, and to refrain from competitive devaluations and exchange rate targeting for competitive purposes.

- **Transparency and Reporting:** Requires public release of relevant data, including interventions in foreign exchange markets and foreign reserve holdings, as well as IMF's annual assessment of their exchange rate.
- **Multilateral Dialogue:** Establishes a group of TPP macroeconomic officials, with possible IMF participation, to meet at least annually to discuss macroeconomic and exchange rate policy issues, including transparency or reporting, and policy responses to address imbalances.

The joint declaration will take effect once TPP enters into force and will apply to countries that accede to the TPP in the future, subject to additional transparency or other conditions determined by the existing TPP countries. The Department of the Treasury emphasizes that this declaration, for the first time in the context of a free trade agreement, addresses unfair currency practices by promoting transparency and accountability. However, the declaration does not include any enforcement mechanism, which some Members were advocating.

Regulatory Barriers

Regulatory and nontariff barriers can affect companies' ability to access foreign markets. TPP includes provisions in various chapters that seek to address these issues by ensuring transparent regulatory processes with notice and public comment periods on proposed new regulations, similar to U.S. practices, and guaranteeing that foreign and domestic companies are treated equally (national treatment).

- **Regulatory Coherence.** Encourages regulatory consistency across agencies and recognition of trade implications in new regulations.
- **Sanitary and Phytosanitary Measures** (SPS).[26] Addresses measures concerning agricultural products and actions taken to protect human, animal, and plant health. Commits parties to base SPS measures on international standards or objective scientific evidence and risk management measures that are no more trade-distorting than necessary; allows for public comment on the development of SPS measures; and provides rapid notification of shipments held on importation. Generally subject to dispute settlement with additional consultative requirements and specific exceptions.
- **Technical Barriers to Trade.** Addresses standard-setting procedures in TPP countries. Provides for transparency in TBT rulemaking, with opportunities for stakeholder participation in development of product standards. Allows for mutual recognition of conformity assessment procedures.
- **Transparency and Anti-Corruption.** Provides measures to assure transparency and provide opportunity for public input with regard to laws and regulations governing market access. Bribery is criminalized in the context of trade and investment. Annex specifically addresses national health care agencies in the listing of new pharmaceutical or medical products, but is not subject to dispute settlement.

Rules of Origin

TPP rules of origin (ROO) determine whether a product is eligible for preferential treatment under the agreement. They can differ by product but generally relate to the degree of

[26] For more information on SPS see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

transformation a product undergoes in an FTA partner country or the share of a product's value that is produced within the FTA region. More restrictive rules of origin generally ensure that TPP tariff benefits accrue primarily to countries inside the agreement, but they may also constrain the tariff benefits for TPP producers by limiting their ability to use diverse supply chains, including non-TPP countries.

- **General.** Provides a single set of rules of origin with cumulation allowed.
- **Textiles and Apparel.** Applies "yarn-forward" rule of origin to textile and apparel products, requiring components be sourced within the TPP region, including the yarn or fabric. A short supply list allows exemptions from this rule for products made of yarns and fabrics in limited supply within the TPP region.
- **Autos.** Requires 45% or 55% regional value content for finished vehicles, depending on the method of calculation, and 35%-45% for auto parts.

Services[27]

TPP includes provisions that address services in a number of chapters and annexes, including through greater market access and specific disciplines for trade in financial, professional, e-commerce, telecommunications, and express delivery services, among other provisions. Commitments are generally on a "negative-list" basis; that is, they apply to all services except those specifically excepted through nonconforming measures. Barriers to services are nontariff in nature, on issues such as licensing, investment restrictions, and the regulatory environment.

- **Cross-Border Services.** Includes core obligations of national treatment, most-favored-nation treatment, market access (i.e., prohibitions on requiring joint ventures or limiting number of suppliers), and local presence (prohibitions on in-country establishment requirements to supply services) with additional commitments on impartial regulation, transparency, and free payment transfers.
- **Express Delivery.** Prohibits a postal monopoly from cross-subsidizing express delivery services, prohibits universal postal service preconditions for express delivery, requires independent and impartial regulation of express delivery, and maintains current market access.
- **Financial Services.** Requires national and most-favored-nation treatment of service providers and ensures market access (i.e., prohibitions on requiring joint ventures or limiting number of suppliers). Incorporates certain investment chapter provisions for access to investor-state dispute settlement and a modified state-to-state mechanism. Requires parties to permit information transfers for data processing, but unlike the e-commerce chapter, which does not apply to financial services, it does not prohibit computing facility localization.
- **Professional Services.** Provisions on recognition of professional qualifications.
- **Telecommunications.** Requires reasonable and nondiscriminatory access to public telecommunications services for TPP country enterprises. Includes requirements for interconnections, number portability, unbundling of network elements, as well as independence, impartiality, and transparency in the regulation of telecommunications services.

[27] For more information see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

State-Owned Enterprises

For the first time in a U.S. FTA, the TPP includes a chapter on state-owned enterprises (SOEs) with provisions regarding activities that affect trade or investment. They address potential commercial disadvantages to private sector firms from state-supported foreign competitors receiving preferential treatment. This could necessitate economic reforms in members with substantial state sectors, such as Malaysia and Vietnam, and may make it more challenging for others, including China, to join at a later date.

- **Definition.** Covers designated monopolies and SOEs principally engaged in commercial activities if the government owns more than 50% of capital share, controls more than 50% of voting rights, or selects a majority of board members.
- **Disciplines.** Provides transparency and reporting requirements that aim to ensure SOEs make purchase and sale decisions in a nondiscriminatory manner and on the basis of commercial considerations. Prohibits noncommercial assistance to SOEs that adversely impact another TPP party. Requires TPP country courts to have jurisdiction over foreign SOEs operating in their territory and administrative bodies to regulate in an impartial manner with regard to SOEs and private firms.
- **Exceptions.** Includes numerous exemptions ranging from general exceptions (such as SOEs with revenue below a certain threshold, or for a government's supply of goods and services to its own party for government functions) to various country-specific exceptions in the form of nonconforming designations.

Author Contact Information

Ian F. Fergusson
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