

# Trans-Pacific Partnership – The 21st Century Agreement: How Will it Affect My Company?

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With the Korea, Panama and Colombia free trade agreements now signed into law and Doha Development Round negotiations at an impasse, U.S. trade negotiators have set their sights on a new multi-lateral free trade agreement – the Trans-Pacific Partnership, or TPP. The TPP is a regional trade agreement the United States is negotiating with eight other Asia-Pacific countries. The TPP partner countries include Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. As negotiations have picked up momentum, Canada, Mexico and Japan have expressed an interest to join TPP, and have actively engaged other existing TPP partners. Costa Rica also recently expressed interest in joining TPP, and is now beginning to engage partners.

## What are the U.S.'s TPP Objectives?

The aim of the negotiations is to conclude an ambitious 21st-century trade agreement that will create and support U.S. jobs through increased exports to the region. From the U.S. perspective, TPP is a first step towards Asia-Pacific-wide economic integration that will include additional countries with robust economies, eventually comprising an area representing 40 percent of global trade. As a 21st-century agreement, the TPP will address new and emerging trade issues, including developments in the digital economy, "green growth" issues and trade distortion resulting from competition with state-owned enterprises. TPP also will include, for the first time in any trade agreement, new mechanisms to foster regulatory compatibility among partner countries and provisions favorable to small- and medium-sized businesses.

## How Will TPP Affect My Company?

Whether your company is an importer or exporter of goods and services from or into a TPP partner country (or potential new entrant), chances are this new agreement could affect your bottom line in any number of ways – some beneficial and some adverse. TPP benefits may include increased or new market access through tariff reductions with potential phase-out to zero tariffs (i.e. duty-free status) for a variety of goods, and increased regulatory transparency and harmonization (such as through country-of-origin marking, product labeling, distribution and protection of intellectual property rights). Downsides, however, may include increased competition for sensitive domestic products, or for U.S. products competing with similar products sold in TPP partner markets.

The inclusion of new entrants may also affect your company. For example, of the four potential new entrants, Japan presents the greatest opportunity and challenge. Japan's efforts to join the TPP have been met with some resistance from some U.S. industries – notably the U.S. auto industry, which is dubious that the Japanese market will ever be truly open to U.S. automobiles. This sentiment is also

shared, in varying degrees, by the U.S. beef and insurance industries.

## What is the TPP Timeframe?

At recent, separate hearings on the trade policy agenda before the House Ways & Means Committee and the Senate Finance Committee, USTR Ambassador Kirk stated the TPP partners intend to complete negotiations by the end of the year. Whether that is a feasible objective remains to be seen. Parties have held several negotiating rounds and are deepening discussions, but have yet to conclude any chapters.

The most recent negotiations (eleventh round) were held from March 2-9 in Australia. The twelfth round is scheduled to take place from May 8-18, most likely in Dallas, Texas, following a preceding inter-sessional meeting, likely in April, on intellectual property rights in Chile. Activity is also anticipated in the summer when trade ministers of TPP partners are expected to make an announcement about the negotiations at the June Asia-Pacific Economic Cooperation (APEC) forum in Russia. In addition, a thirteenth round of negotiations is scheduled for July, possibly in the United States. The ambition is reportedly U.S.-driven, with pressure to complete negotiations on sensitive areas before attentions turn to the Presidential election in early fall.

## How Can I Advocate for or Protect My Company's Interest?

Whatever the impact, staying abreast of the evolving negotiations and potential new entrants – with Japan generating the most interest and resistance – could be critical to your business. Now is the time to weigh in with negotiators to shape the outcome of the agreement and protect your company's interests, whether they are of a defensive or offensive nature.

Please contact [Paul Rosenthal](#) or [Jennifer McCadney](#) if you have any questions or concerns about how TPP may be advantageous or adverse to your business. As negotiations move forward, we would be happy to provide you with a customized analysis and monitor developments affecting your interests.

## The Trans-Pacific Partnership (TPP): A Primer

The TPP is a regional trade agreement the United States is negotiating with eight other Asia-Pacific countries. These countries include Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The purpose of the negotiations is to conclude an ambitious 21st-century trade agreement that will create and support U.S. jobs through increased exports to the region.

USTR further envisions the agreement as a first step towards Asia-Pacific-wide economic integration by including additional countries with robust economies that will eventually cover a region of the world representing 40 percent of global trade. USTR believes that expanding access to the Asia-Pacific region, with its rapid growth and large markets, is vital to U.S. trade. As such, TPP is a key trade priority for the Administration. It also appears to have qualified, bipartisan Congressional support. (See "Current Negotiation and Congressional Developments" section below.)

## TPP Framework

The framework of this 21st-century agreement, as USTR explains, will be designed to address new and emerging trade issues. Emerging issues the agreement will address include developments in the digital economy such as cloud computing, and "green growth" issues such as commitments to address fisheries subsidies and illegal marine fisheries practices, illegal wildlife trade and illegal

logging associated to trade. The TPP partners also are exploring ways to address trade distortion resulting from special treatment provided to state-owned enterprises. New issues and mechanisms that TPP will incorporate – for the first time in any free trade agreement – include making the regulatory systems of TPP countries more compatible so U.S. companies can operate seamlessly in TPP markets, enhanced means for government-stakeholder communications after the agreement enters into force, and provisions favorable to small- and medium-sized enterprises.

## Status of Negotiations

Since the November 2009 announcement of the Administration's intent to participate in the TPP, the parties have held 11 rounds of negotiations. The last round concluded in mid-March, 2012 in Australia. During this round, negotiations widely expanded and deepened in the following areas: investment, technical barriers to trade, labor, intellectual property rights, rules of origin, financial services, temporary entry, trade remedies, regulatory cooperation and trade capacity building, sanitary and phytosanitary measures, environment, telecommunications, competition, non-conforming measures, government procurement, e-commerce, market access and customs issues. In addition, the round included stakeholder presentations on related topics. Stakeholders represented a wide range of industry, civil society and academic interests from Australia, Chile, Malaysia, New Zealand, Vietnam and the United States.

The 12th round of negotiations is planned for early May 2012 in Dallas, Texas. In the time leading up to the next round, there will be an inter-sessional meeting in Chile to discuss intellectual property rights. TPP leaders hope to finalize the agreement by the end of the year, and President Obama has instructed USTR to prioritize the agreement and work to resolve outstanding issues as soon as possible.

## Congressional Developments

In terms of Congressional developments, the Ways & Means Trade Subcommittee held a hearing on TPP in December 2011. Deputy USTR Ambassador Demetrios Marantis testified on behalf of the government and the private sector panel included testimony from Wal-Mart, Cargill, and an individual appearing on his own capacity, providing organized labor's perspective. The hearing was a significant indicator of how important Congress considers completion of the TPP. Subcommittee Chairman Kevin Brady (R-TX) expressed his strong support for the agreement, urging completion of the talks by mid-2012. The hearing also provided a venue for Members to raise issues of concern. Subcommittee Ranking Member Jim McDermott (D-WA) recognized TPP's "big potential," but cautioned that the agreement must be done right, including by addressing labor, environmental issues (pursuant the May 10 Agreement) and providing access to life-saving generic medicines.

Moreover, in late February and early March, USTR Ambassador Ron Kirk appeared before the House Waysand Means Committee and Senate Finance Committee in separate hearings on the President's trade agenda. TPP was prominently discussed in both hearings, where Ambassador Kirk reiterated the negotiating parties intent to finalize the agreement by the end of the year. In the House, Members applauded this notion, but concerns quickly turned to complications posed by new entrants, including Japan (see "Key Issue – Other Participants" section below). In the Senate hearing, Members also raised concerns about new entrants (more below), but also expressed concerns about tariff reduction in footwear, a contested area where importers who seek tariff elimination face opposition from domestic producers of athletic shoes.

## Key Issue – Other Participants

The most significant developing issue is the interest other countries have expressed in joining TPP. These countries include Japan, Canada and Mexico, and more recently, Costa Rica. Of the four, Japan's interest presents the greatest opportunity and challenge. Japan is the third largest economy in the world and the U.S.'s fourth largest trading partner. It also has historically closed markets and non-tariff barriers – notably in agriculture, autos and services among others – so its participation will have enormous implications. Japan's efforts to join the TPP has been met with some resistance from some in the United States – notably the U.S. auto industry, which is dubious that the Japanese market will ever be truly open to U.S. automobiles.

At the Ways & Means hearing on the trade agenda, Ranking Member Levin cautioned whether TPP would have the necessary tools to crack Japan's historically closed markets. Ambassador Kirk emphasized that TPP will be a "high standard agreement" to which Japan's invitation would not merely be to "join" but "prescribe" to its principles. Ambassador Kirk noted the U.S. has, for the first time in any FTA, tabled proposals on state owned enterprises (SOEs) and e-Commerce. The SOE language could help address long-standing issues in Japan, including barriers to its insurance industry, which is dominated by the state-owned Japan Post, while the e-Commerce language would help ensure the free flow of information across borders. Senators expressed similar concerns. At the Senate Finance Committee hearing on the trade agenda, Chairman Baucus pressed Ambassador Kirk to use TPP as leverage over Japan to end its restrictions on U.S. beef imports, while Senator Thune urged USTR to not only pursue beef restrictions, but also restrictions on autos and foreign insurance companies who face unfair competition from Japan Post.

The TPP partners have agreed to a process for considering new participants, including bilateral discussions, leading to agreements with existing participants. Upon conclusion of those agreements, the current TPP partners will decide by consensus the participation of any new country. Additionally, the partners have stated they do not want new participants to be able to re-open agreed upon text after joining. A new participant must accept whatever terms current members have agreed to at the time they join. Thus, there is pressure among current participants to agree to a text before accepting new participants. The TPP partners have made no indications as to when they believe accepted new entrants will be announced.

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