

Case Analysis II

Material #1

The Trans-Pacific Partnership Agreement (TPP)

EE 459 – Semester 1 / 2017

Summarized from Published Documents of Office of the United States Trade Representative

The Trans-Pacific Partnership Agreement

- On October 4, 2015, Ministers of the 12 Trans-Pacific Partnership (TPP) countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam – announced **conclusion of their negotiations**.
- The result is a high-standard, ambitious, comprehensive, and balanced agreement that will promote **economic growth**; support the creation and retention of **jobs**; enhance **innovation**, productivity and competitiveness; raise living standards; reduce **poverty** in our countries; and promote **transparency**, good governance, and enhanced labor and **environmental protections**.
- We envision conclusion of this agreement, with its new and high standards for trade and investment in the Asia Pacific, as an important step toward our ultimate goal of open trade and regional integration across the region.

KEY FEATURES

- Five defining features make the Trans-Pacific Partnership a landmark 21st-century agreement, setting a new standard for global trade while taking up next-generation issues. These features include:
 - (1) Comprehensive market access
 - (2) Regional approach to commitments
 - (3) Addressing new trade challenges
 - (4) Inclusive trade
 - (5) Platform for regional integration

KEY FEATURES (1)

(1) Comprehensive market access

The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment, so as to create new opportunities and benefits for our businesses, workers, and consumers.

KEY FEATURES (2)

(2) Regional approach to commitments

The TPP facilitates the development of production and supply chains, and seamless trade, enhancing efficiency and supporting our goal of creating and supporting jobs, raising living standards, enhancing conservation efforts, and facilitating cross-border integration, as well as opening domestic markets.

KEY FEATURES (3)

(3) Addressing new trade challenges

The TPP promotes **innovation**, productivity, and competitiveness by addressing new issues, including the development of the **digital economy**, and the role of **state-owned enterprises** in the global economy.

KEY FEATURES (4)

(4) Inclusive trade

The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade.

- It includes commitments to **help small- and medium-sized businesses** understand the Agreement, take advantage of its opportunities, and bring their unique challenges to the attention of the TPP governments.
- It also includes specific commitments on development and **trade capacity building**, to ensure that all Parties are able to meet the commitments in the Agreement and take full advantage of its benefits.

KEY FEATURES (5)

(5) Platform for regional integration. The TPP is intended as a platform for regional economic integration and designed to **include additional economies** across the Asia-Pacific region.

SCOPE

- The TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; electronic commerce; government procurement; intellectual property; labour; environment; ‘horizontal’ chapters meant to ensure that TPP fulfils its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions.

SCOPE (cont'd)

- In addition to updating traditional approaches to issues covered by previous free trade agreements (FTAs), the TPP incorporates **new and emerging trade issues** and cross-cutting issues. These include issues related to the **Internet and the digital economy**, the participation of **state-owned enterprises** in international trade and investment, the ability of **small businesses** to take advantage of trade agreements, and other topics.

SCOPE (cont'd)

- TPP unites a diverse group of countries – diverse by geography, language and history, size, and levels of development.
- All TPP countries recognize that **diversity is a unique asset**, but also one which requires close cooperation, **capacity-building for the lesser-developed TPP countries**, and in some cases special transitional periods and mechanisms which offer some TPP partners additional time, where warranted, to develop capacity to implement new obligations.

MAIN ISSUES

Chapter 2. Trade in Goods

- TPP Parties agree to **eliminate and reduce tariffs and non-tariff barriers on industrial goods**, and to eliminate or reduce tariffs and other **restrictive policies on agricultural goods**. The preferential access provided through the TPP will increase trade between the TPP countries in this market of 800 million people and **will support high-quality jobs** in all 12 Parties.
- Most **tariff elimination in industrial goods** will be **implemented immediately**, although tariffs on some products will be eliminated over longer timeframes as agreed by the TPP Parties. The specific tariff cuts agreed by the TPP Parties are included in **schedules covering all goods**. The TPP Parties will publish all tariffs and other information related to goods trade to ensure that **small- and medium-sized businesses** as well as **large companies can take advantage of the TPP**.
- They also agree **not to use performance requirements**, which are conditions such as **local production requirements** that some countries impose on companies in order for them to obtain tariff benefits. In addition, they agree **not to impose WTO-inconsistent import and export restrictions and duties**, including **on remanufactured goods** – which will **promote recycling of parts into new products**. If TPP Parties maintain import or export license requirements, they will notify each other about the procedures so as to increase transparency and facilitate trade flows.
- On agricultural products, the Parties will eliminate or **reduce tariffs and other restrictive policies**, which will increase agricultural trade in the region, and enhance **food security**. In addition to eliminating or reducing tariffs, TPP Parties agree to promote policy reforms, including by **eliminating agricultural export subsidies**, working together in the WTO to develop disciplines on export state trading enterprises, export credits, and limiting the timeframes allowed for restrictions on food exports so as to provide greater food security in the region. The TPP Parties have also agreed to increased **transparency and cooperation** on certain activities related to **agricultural biotechnology**.

MAIN ISSUES

Chapter 3. Textiles and Apparel

- The TPP Parties agree to **eliminate tariffs on textiles and apparel**, industries which are important contributors to economic growth in several TPP Parties' markets.
- Most tariffs will be eliminated immediately, although tariffs on some sensitive products will be eliminated over longer timeframes as agreed by the TPP Parties.
- The chapter also includes **specific rules of origin** that require **use of yarns and fabrics from the TPP region**, which will **promote regional supply chains and investment in this sector**, with a **“short supply list”** mechanism that **allows use of certain yarns and fabrics not widely available** in the region.
- In addition, the chapter includes commitments on customs cooperation and enforcement to prevent duty evasion, smuggling and fraud, as well as a **textile-specific special safeguard** to respond to serious damage or the threat of **serious damage to domestic industry** in the event of a sudden surge in imports.

MAIN ISSUES

Chapter 4. Rules of Origin

- To provide simple rules of origin, promote regional supply chains, and help ensure the TPP countries rather than non-participants are the primary beneficiaries of the Agreement, the 12 Parties have agreed on a single set of rules of origin that define whether a particular good is “originating” and therefore eligible to receive TPP preferential tariff benefits.
- The product-specific rules of origin are attached to the text of the Agreement. The TPP provides for “accumulation,” so that in general, inputs from one TPP Party are treated the same as materials from any other TPP Party, if used to produce a product in any TPP Party. The TPP Parties also have set rules that ensure businesses can easily operate across the TPP region, by creating a common TPP-wide system of showing and verifying that goods made in the TPP meet the rules of origin.
- Importers will be able to claim preferential tariff treatment as long as they have the documentation to support their claim. In addition, the chapter provides the competent authorities with the procedures to verify claims appropriately.

MAIN ISSUES

Chapter 8. Trade Remedies

- The Trade Remedies chapter promotes transparency and due process in trade remedy proceedings through recognition of best practices, but does not affect the TPP Parties' rights and obligations under the WTO. The chapter provides for a **transitional safeguard mechanism**, which allows a Party to apply a transitional safeguard measure during a certain period of time **if import increases as a result of the tariff cuts implemented under the TPP cause serious injury to a domestic industry**.
- These measures may be maintained for **up to two years**, with a **one-year extension**, but must be progressively liberalized if they last longer than a year. Parties imposing safeguard measures must follow notification and consultation requirements. The chapter also sets out rules requiring that a TPP Party applying a **transitional safeguard measure provide mutually-agreed compensation**. The Parties may not impose more than one of the safeguards allowed under TPP on the same product at the same time. The Parties may not impose a transitional safeguard measure on any product imported under a TPP tariff rate quota, and may exclude TPP products from a WTO safeguard measure if such imports are not a cause or threat of serious injury.

MAIN ISSUES

Chapter 9. Investment

- TPP provides the basic investment protections found in other investment-related agreements, including national treatment; most-favored-nation treatment; “minimum standard of treatment” for investments in accordance with customary international law principles; prohibition of expropriation that is not for public purpose, without due process, or without compensation; prohibition on “performance requirements” such as local content or technology localization requirements; free transfer of funds related to an investment, subject to exceptions in the TPP to ensure that governments retain the flexibility to manage volatile capital flows, including through non-discriminatory temporary safeguard measures (such as capital controls) restricting investment-related transfers in the context of a balance of payments crisis or the threat thereof, and certain other economic crises or to protect the integrity and stability of the financial system; and freedom to appoint senior management positions of any nationality.
- TPP Parties adopt a “negative-list” basis, meaning that their markets are fully open to foreign investors, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes: (1) current measures on which a Party accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization, and (2) measures and policies on which a Party retains full discretion in the future.

MAIN ISSUES

Chapter 14. Electronic Commerce

- In the Electronic Commerce chapter, TPP Parties commit to ensuring free flow of the global information and data that **drive the Internet and the digital economy**, subject to legitimate public policy objectives such as personal information protection. **The 12 Parties also agree not to require that TPP companies build data centers to store data as a condition for operating in a TPP market, and, in addition, that source code of software is not required to be transferred or accessed.** The chapter prohibits the imposition of **customs duties on electronic transmissions**, and prevents TPP Parties from favoring national producers or suppliers of such products through **discriminatory measures or outright blocking**.
- To protect consumers, TPP Parties agree to adopt and maintain consumer protection laws related to fraudulent and deceptive commercial activities online and to ensure that privacy and other consumer protections can be enforced in TPP markets. Parties also are required to have measures to stop unsolicited commercial electronic messages.
- To facilitate electronic commerce, the chapter includes provisions encouraging TPP Parties to **promote paperless trading between businesses and the government, such as electronic customs forms; and providing for electronic authentication and signatures for commercial transactions.** A number of obligations in this chapter are subject to relevant non-conforming measures of individual TPP members.
- The 12 Parties agree to cooperate to help **small- and medium-sized business take advantage of electronic commerce**, and the chapter encourages cooperation on policies regarding personal information protection, online consumer protection, **cybersecurity** threats and cybersecurity capacity.