Inside Counsel

# Understanding the Trans-Pacific Partnership

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After more than six years of intensive negotiations, the United States and 11 other Pacific Rim countries recently reached agreement on a massive trade pact, the Trans-Pacific Partnership (TPP). Member nations include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The TPP allows other nations to join by agreeing to its terms, and South Korea has already expressed interest. Notably missing from that list, however, is China. The TPP has both strong supporters and critics, although it is clear that once ratified—if ratified—by all member nations, the pact will have a significant impact on cross-Pacific trade and global politics.

The TPP is expected to result in unprecedented free and fair global trade among the 12 participant nations, which comprise nearly 40 percent of global gross domestic product (GDP) and more than 25 percent of all global trade. It is estimated that member states' global trade percentage will rise to as high as 50 percent under the TPP. The Peterson Institute for International Economies, a Washington think tank, predicts the resultant savings could boost the world economy by $223 billion by 2025, assuming ratification in 2016.

One of the TPP's primary goals is to lower trade barriers to the sale of goods and services (including tariffs) and establish commercial trade rules. It removes barriers to foreign investment, streamlines customs procedures and creates an international dispute resolution system. In addition, the TPP combats corruption and sets standards for intellectual property rights and governmental procurement, including the strongest worker and environmental protections of any trade agreement in history.

The total goods and services traded in 2014 between the United States and the 11 other TPP countries totaled approximately $1.57 trillion. Nearly all of those exports were subject to significant tariffs, many of which would be eliminated by the TPP. According to the National Economic Council, "At its core, TPP is a massive tax cut for American businesses," as it would eliminate more than 18,000 tariffs that the other TPP member countries impose on made-in-America exports. For example, California winemakers are now taxed up to 55 percent in TPP countries. This tariff would be reduced to zero under the TPP.

Those standing to especially benefit from lower import duties include Vietnam's apparel and shoe manufacturers; Malaysia's palm oil, rubber and electronics' exporters;

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Japan's car and auto-part makers; U.S. manufacturers; and farmers and ranchers in the United States, Australia and New Zealand.

To curb China's dominance and influence in the region, the negotiators notably excluded the world's second largest economy. The deal will put pressure on China and India to open their markets and accept greater competition, and South Korea may also suffer by not being included. While China is considering its own trade plans, experts predict it will have little choice but to join the TPP once it recognizes the benefits enjoyed by the participating countries.

## The case for the TPP

I According to a written statement by trade representatives of TPP member countries, the pact will "support jobs, drive sustainable growth, foster inclusive development and promote innovation across the Asia-Pacific region." As the White House argues, tariffs now make U.S. goods and services more expensive and less attractive to overseas buyers. The TPP will make U.S. goods and services more competitive, and U.S. companies will hire more employees to meet the increased demand. The White House also argues the TPP will clarify trade rules that trap both large and small businesses in endless red tape and make importing and exporting goods difficult.

And although the TPP will help U.S. small businesses benefit from global trade, big businesses that produce products overseas also support the deal, since the pact would reduce tariffs on items produced overseas and then shipped to the United States for sale. As an illustration, 98 percent of all shoes sold in the United States are imported, and companies like Nike have been vocal advocates for the TPP.

Moody's Investor Services has ranked the pact credit-positive for all 12 participating countries. "The deal will reduce the cost of trade and open up new investment opportunities, supporting growth," Moody's writes, and "greater access to the U.S. for goods should help to make Asian countries the biggest beneficiaries in GDP-relative terms."

For instance, Vietnam is expected to see a 10 percent boost in GDP by 2025 under the TPP—twice as much as any other Asian market, with Malaysia expecting a 5 percent boost. Moody's recognizes that the TPP could reduce customs revenues; however, additional receipts from the expected increase in economic growth due to the TPP likely will offset reduced tax revenues.

## Criticism of the TPP

Among those speaking out against the deal are unions, workers' rights groups and environmentalists, who argue that the environmental and labor protections do not go far enough. Free-speech advocates claim the TPP's intellectual property provisions (which apply U.S.-style restrictive intellectual property laws to all member nations, extending beyond existing international standards) raise concerns about freedom of expression, the Internet's global infrastructure and the right of sovereign nations to develop their own laws to govern their citizens' use of the Internet.

Some have criticized the TPP for its treatment of drug companies, as the pact's intellectual property chapter appears to outlaw a new kind of generic drug (a "biosimilar"—as opposed to a biologic) for at least 10 years, potentially driving up costs for non-generic drugs. Critics have also expressed concern that the agreement doesn't address currency manipulation. Under the North American Free Trade agreement (NAFTA), Mexico devalued the peso within weeks of signing that agreement; the devaluation was cited as a factor in U.S. job losses.

The TPP may remind people of NAFTA, a 1994 trade agreement between the United States, Canada and Mexico. Under NAFTA, the United States has lost nearly 700,000 jobs, more than 60 percent of them in manufacturing. However, President Barack Obama has stressed that the TPP "fixes some of what was wrong with NAFTA by making labor and environmental provisions actually enforceable." Obama argues the TPP will not cost U.S. jobs but will raise standards for workers in countries like Vietnam, to which many large U.S. companies outsource work.

The TPP's ratification by each member country will run into 2016. In the United States, this will coincide with election season, meaning Obama may find difficulty in securing the bipartisan votes needed for congressional approval. As Obama reaches the end of his tenure as president, it is likely the next person in the White House will be the one to take the credit for any successes under the pact. Regardless of the criticism of the TPP, however, it is clear that if it is ratified, it will lead to major changes in the global marketplace.