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**The Origins and Evolution of the Trans-Pacific Partnership (TPP) Trade Negotiations**

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**1.0 In the Beginning...**

The Trans-Pacific Partnership (TPP) trade negotiations began life as a different trade agreement. Now known as the P4 or “Pacific Four,” the official name of the agreement, announced at the APEC Trade Ministers meeting in June 2005, was the Trans-Pacific Strategic Economic Partnership Agreement (TPSEP).<sup>1</sup> The P4 linked together Brunei Darussalam, Chile, New Zealand and Singapore. It grew out of attempts within APEC to create a larger economic free trade area. When these talks foundered, the leaders of the P4 countries pressed ahead with plans to demonstrate how small, largely open economies could still benefit from trade liberalization.<sup>2</sup> However, given the quite modest levels of trade between the four, the P4 came into force in 2006 with very little attention.<sup>3</sup>

The original P4 negotiations closed without resolution on two difficult areas of negotiation—financial services and investment. The four country leaders elected to finish the agreement and then re-launch discussions on these outstanding issues within two years.

When the negotiations started in February 2008 over the two missing chapters, the United States also began to participate in the discussions.<sup>4</sup> In September 2008, American

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participation deepened with the announcement that the United States would seek to join the agreement in its entirety. When this happened, the P4 moved from a small experiment into something larger and much more interesting. Australia, Peru and Vietnam also joined the talks.<sup>5</sup> In 2008, the P4 agreement had morphed into the TPP with eight members.

The United States' involvement with the P4 was an important decision given its relatively low number of trade deals. The United States opted to join the agreement in the twilight days of the George W. Bush administration. The American announcement was made in September 2008, with the election looming in November.

To make such a pronouncement ahead of a tight election might seem especially odd. At a minimum, it could have been argued that the decision could be easily postponed until after the election so the new administration could decide whether or not they wished to be involved in the trade arrangement. Instead, United States Trade Representative (USTR) Susan Schwab chose to ensure American participation regardless of which party won control of the government.<sup>6</sup>

This decision came about because when senior Bush administration officials looked at the world in mid-2008, they were concerned about the growing discussions in Asia about the creation of new trade arrangements in the region that might exclude the United States.<sup>7</sup> The Doha negotiations at the World Trade Organization (WTO) had collapsed over the summer. Options to anchor the U.S. firmly in Asia were limited. For example, the Bush team judged that APEC alone would not be sufficient to keep the United States engaged in the region. Creating a new trade agreement would require complicated and difficult negotiations within the United States.<sup>8</sup> Hence, joining an existing, small-scale agreement like the P4 appeared to be an attractive option.

New Zealand was keen to have the Americans participate. The two sides did not have an existing free trade agreement, largely stemming from fallout over the country's ban on

American nuclear ship refueling and the size and composition of the New Zealand market. The domestic market in New Zealand was small, with just four million citizens, but the country was famous for having a competitive agricultural sector, led by the dairy industry. Given the sensitivity of the dairy industry in the United States, as well as the beef and lamb industries, bilateral negotiations were likely to be difficult. A TPP agreement would be the best hope for New Zealand firms to gain access to the U.S. market.

Neither Brunei nor Vietnam had existing access into the American market via a free trade agreement. The TPP represented an excellent way for both to ensure preferential access for their exporters into the largest global market.

Many of the existing and incoming TPP members in 2008 were already linked together by a dense web of existing free trade agreements.<sup>9</sup> For some members, like Chile or Peru, this new agreement was less about offering new market access to the United States or others. Chile, after all, had trade agreements with everyone. Singapore had three separate deals linking together its market with New Zealand.

Instead, these members looked to the opportunity to engage further with different regions. Another key objective was to craft a deal that would knit together overlapping, preexisting FTA provisions in new and innovative ways. Australia, for example, had been a party to discussions in the late 1990s in APEC with the United States, Chile, New Zealand and Singapore. It had not moved ahead with the P4 countries, but once the U.S. announced in 2008 its intentions to join the expanded chapters, Australia also quickly said it would join. For Australia, the primary motivation was not so much about trade expansion, given the country's links with every potential member except for Peru. Instead, it was largely about getting Australian voices at the negotiating table when drafting what were already seen as the "new rules of the trade game."<sup>10</sup>

## 2.0 Getting Started with the TPP

Negotiations did not begin for more than year however, as the United States was switching administrations and the incoming Obama White House decided how to proceed. In fact, it was not until November 2009 when the president was on his way to an APEC leader's summit that he made his first public pronouncements about the deal. In a speech in Tokyo, President Obama declared that the United States would “engage with” the TPP countries.

He continued, “I know that the United States has been disengaged from these [multilateral] organizations in recent years. So let me be clear: those days have passed. As an Asia-Pacific nation, the United States expects to be involved in the discussions that shape the future of this region and to participate fully in appropriate organizations as they are established and evolve.”<sup>11</sup>

As Obama's statement suggests, the White House spent time in 2009 more carefully considering the motivations for the United States' participation in the TPP. In particular, the Obama administration came to fold the trade agreement into a larger “pivot” or “rebalance” to Asia. The Obama team came into office determined to shift attention away from the Middle East. Secretary of State Hillary Clinton penned an article for *Foreign Policy* in 2011 that outlined the policy in greater detail, as she became the chief spokesperson for the concept.<sup>12</sup>

Kirk Campbell, US Assistant Secretary of State for East Asian and Pacific Affairs, later defined the pivot as “premised on a desire for a peaceful, stable and economically prosperous region – a vision shared with America's Asian partners. . . From friends in Asia, the United States seeks nothing less than their active commitment to building and sustaining this effort on all fronts, so that all countries in the Asia-Pacific region play their part in

finding and implementing solutions to shared regional and global challenges, from the proliferation of dangerous weapons to the impacts of climate change.”<sup>13</sup>

Although the pivot was not all about economics, for the Obama administration, markets mattered in crafting its foreign, economic and security policy. In 2009, the economic center of gravity was clearly to be found in Asia, with 60 percent of global GDP and nearly half the world’s international trade.<sup>14</sup> USTR Ron Kirk noted that the United States was not a party in the proliferating trade agreements in Asia. As a result, he wrote, “these agreements, as well as other economic developments, have led to a significant decline in the U.S. share of key Asia-Pacific markets over the past decade.”<sup>15</sup> The TPP, Kirk promised, was one way to help reverse these trends.

### **3.0 USTR Notifies Congress**

Kirk formally notified Congress of the Administration’s intention to enter into negotiations with the TPP countries on December 14, 2009.<sup>16</sup> Kirk took this step because the White House was following a domestic policy procedure in Washington known as Trade Promotion Authority (TPA). TPA, which used to be called “fast track,” authorizes the Executive branch to negotiate trade deals on behalf of Congress.<sup>17</sup>

This formal notification was not technically required, as TPA had expired in 2007 and had not been renewed.<sup>18</sup> However, from the beginning, USTR chose to negotiate the TPP agreement “as if” TPA rules were in effect.

There are four key elements of the provision for officials. First, each time the bill has been authorized, Congress has spelled out the broad trade negotiating mandates to be followed and outlined the procedures for consultation. Second, under TPA, negotiations cannot begin with a new partner in a trade agreement until ninety days have passed. This allows time for Congress, companies and the general public to comment on the proposed

negotiations. Third, TPA requires the Executive Branch (in practice, the Office of the Trade Representative) to regularly report back to Congress on the progress of the negotiations. This is necessary because the final requirement of TPA is that Congress agrees to vote the entire agreement up or down in the end without amendment. When the original authorization was given for TPA in 1974, Congress argued they could only agree to such a law if members believed that they had been sufficiently consulted and their input was sought along the way in the negotiations. Congress retains the right and responsibility to implement any negotiated trade agreement.

The fight over the reauthorization of TPA resurfaced later in the negotiations. At the time of Kirk's notification of entry into the TPP bargaining, however, Congressional comment was muted.<sup>19</sup>

#### **4.0 Launching with New Templates**

It was not until March 2010, after the ninety day period had concluded, that the first round of negotiations started in Melbourne, Australia.

Although the original intention of the P4 countries was to lay a foundation for future expansion in the agreement by way of the accession clause, when delegates met in Melbourne, officials fairly quickly discarded the P4 as a negotiating template. Instead, they decided to start again with a new agreement and spent the first half dozen rounds discussing different approaches to the negotiations.<sup>20</sup>

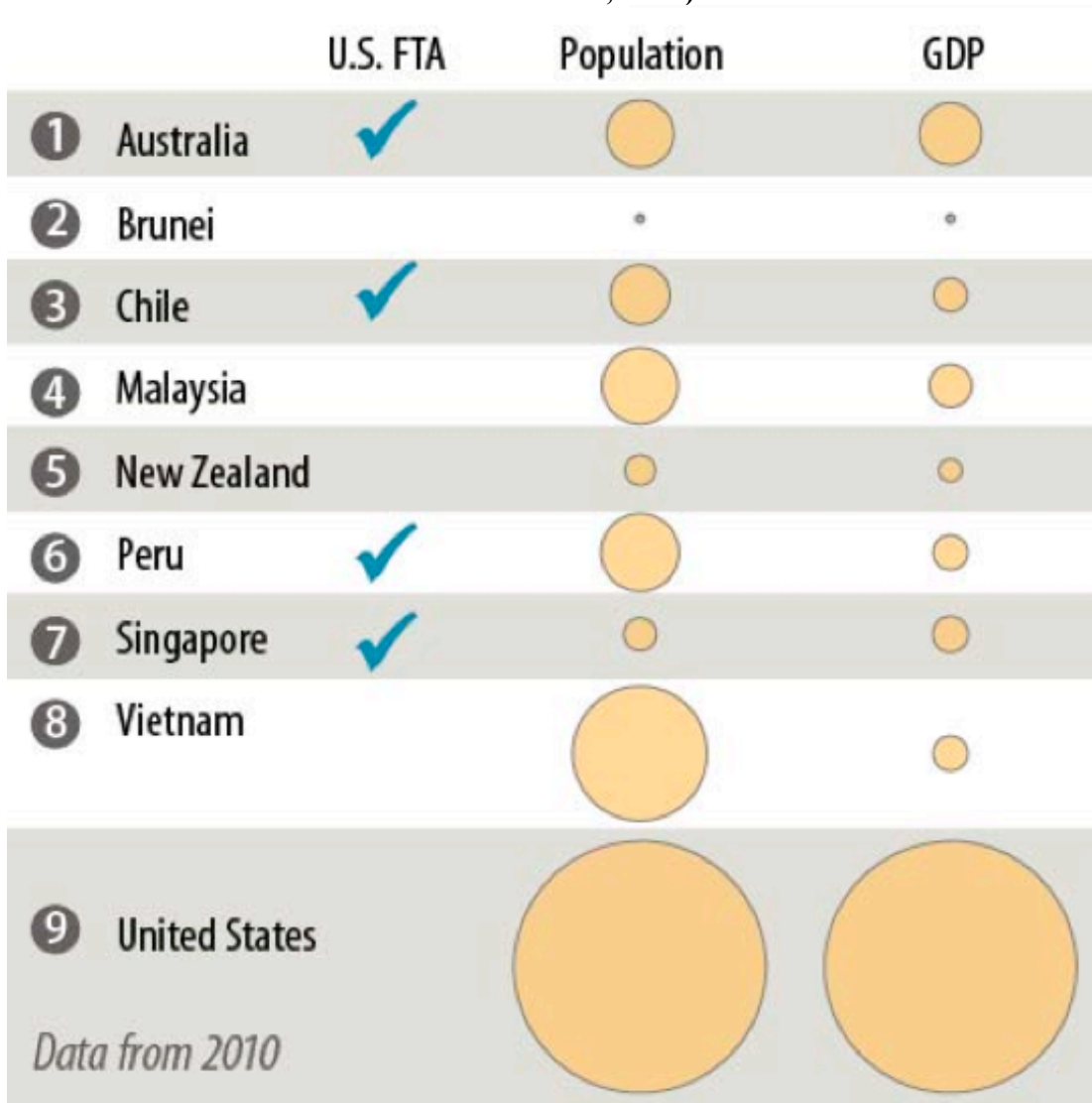
What remained in place between the P4 and TPP was a commitment to crafting a high quality, ambitious trade agreement. Deciding what this meant in practice was difficult. Each country delegation—and perhaps even each individual negotiator—may have chosen to define the terms differently. Despite endless hours spent holed up in hotel and conference rooms around the world, officials never really tried to define either “high-quality” or

“ambitious” and instead left each team to decide what sort of outcomes in each sector might fit the bill.

The P4 itself contains many similarities to American FTA agreements. This is because Singapore and Chile had gone through the (sometimes painful) process of negotiating with the United States in their respective bilateral agreements. These deals represented some of the most comprehensive agreements that either country had signed. For Singapore, for example, all subsequent, post-2004, FTAs contain language drawn from the US-Singapore FTA. Using overlapping language and provisions across multiple trade agreements can minimize the difficulties faced by firms in using the deals in the end. Thus, when the countries sat down to craft the original P4 agreement, some of the text was similar to the USSFTA as well as the US-Chile FTA.

Once the Americans were at the table, however, the U.S. influence in drafting new language for the TPP increased. Partly this was a matter of size and weight of the economic partners. The United States was simply the gorilla in the negotiations on nearly every economic measure.

**Figure 1. Trans-Pacific Partnership Countries (Trade Data in Billions of U.S. dollars, 2010)**



Source: Analysis by CRS. FTA data from the United States Trade Representative (USTR). Population and GDP data from IMF, World Economic Outlook, September 2011. Trade data from the U.S. International Trade Commission (ITC). Shown in Brock Williams, “TPP Countries: Comparative Trade and Economic Analysis,” CRS7-5700, February 8, 2012

The American team also faced domestic challenges related to the final passage of the agreement that were particularly daunting. If the text of the TPP ran contrary to the desires of the U.S. Congress, it would not have been possible to get the final deal ratified. Although, of course, the final TPP agreement needed to satisfy domestic constituents in every member country, the specific voting requirements of the Americans were different. Other members



could more easily count on party control of the legislature, for instance, to ensure agreement at the domestic level in the end, or were not required to submit the final deal to any review body before implementation.

Finally, on a practical level, many TPP member officials outside the United States recognized that the Americans were likely to rewrite draft texts in their own image anyway, thus dramatically reducing the incentives to prepare early drafts.<sup>21</sup> This meant that, as the TPP negotiations proceeded, the final deal continued to closely resemble existing American FTAs (and especially the US-Korea FTA or KORUS, since it was the most recent and most advanced agreement).

## **5.0 Aspirational Goals**

Some early elements of the high quality nature of the deal remained unchanged. The TPP was always intended to be both broader and deeper than other FTAs. This meant the agreement would include significant commitments in what are often called “behind-the-border” issues, and focus attention on trying to harmonize regulations (or at least minimize divergence). The depth of the deal meant that nearly all issues were on the table.

Officially, “all” issues were on the table. By this, officials generally meant that market liberalization for goods was to include zero tariffs for all products. But some issues that might plausibly have been considered as part of the agenda were never opened for discussion at all. For instance, the United States refused to discuss changes to a domestic law called the “Jones act” that prevents foreign built or foreign flagged vessels from moving cargo or people within the U.S. borders. The law was originally passed in 1920 to encourage the maintenance of an American merchant marine fleet. Many now view the act as an impediment to trade, since it prevents transshipment of cargo, or cabotage, through U.S. ports by foreigners.<sup>22</sup>

Such exceptions to market opening from the beginning, however, were quite modest. Instead, members were expected to fully open their markets for goods, services, and investments to one another. Also on the agenda were items like the opening of government procurement markets or the expansion of intellectual property (IP) rights rules. These areas had been covered before in some agreements, but many existing FTAs either skipped over the topics (like procurement) or did not go beyond commitments in other arenas (like IP promises made at the WTO).

Finally, the early talks included hopeful conversations about “21<sup>st</sup> century new issues.” This included the idea that regulations could be coordinated between members—not with the goal of writing one set of standards or rules, but with minimizing divergence or slowly bringing about convergence or coherence. Another new issue was the idea of trying to foster the involvement of small and medium enterprises, since SMEs formed the backbone of enterprise in nearly all TPP member countries.

The TPP member countries at the outset, as noted above, were well-linked by existing FTAs. However, these agreements were mostly bilateral. In a world of supply chains, such connections are less helpful to business than deals that hook together members across a wider set of countries. Companies participating in supply chains want the ability to ship goods and services freely across borders with no impediments. Firms hoped to remove not just tariffs, but also various non-tariff barriers like incompatible standards or regulatory testing. They also wanted to be able to count on similar rules for competition, customs procedures, logistics and delivery company guidelines, or e-commerce. Many of these issues, however, fall in between traditional FTA chapters (and government ministry mandates). Therefore, the TPP originally tried to tackle supply chains in a comprehensive manner without splitting the topic into constituent parts.<sup>23</sup>

Finally, the TPP was a unique agreement that brought together members at differing levels of economic development. Often, in deals that include such a disparity of country participants, the agreement includes something called “special and differential treatment” (S&D). This concept, drawn from the GATT/WTO, gives developing country members additional flexibility. Provisions may have different, often less ambitious, commitments or longer timelines for implementation. S&D may include capacity building funding and training for the hard and soft infrastructure needed to enact the provisions of the agreement. From the earliest days, the members ruled out S&D for the TPP. Every member would be subject to the same rules and regulations as every other member.<sup>24</sup> Developing country participants would have additional time (and even this concession was limited in scope) and a very modest amount of external support for capacity building.

## **6.0 Getting Down to Business**

After the initial meeting in March 2010, members held three additional rounds of negotiations in the first year: in San Francisco in June, Brunei in October, and Auckland in December. Members mostly spent time trying to think through how to add value by creating a larger agreement rather than beginning the arduous task of drafting texts.

Of particular note, however, was the addition of Malaysia to the TPP in the fall during the Brunei meetings. Although the original P4 included a clause to add new members, it did not stipulate how such members were to be added. When Malaysia expressed an interest in joining, members crafted an informal set of procedures that remained in place ever since. First, the prospective member had to indicate to the collective grouping their desire to join. The group could decide to let the discussions proceed (or not).

Then, the potential member had to start scheduling bilateral consultations with existing members. This allowed the two sides to discuss long-standing bilateral irritants that

were likely to interfere with the smooth integration of the new member into the larger setting. The extent to which the new member was required to resolve these issues varies—it is possible to argue that unilateral moves to address issues are not appropriate, since many problems might be reasonably be expected to be part of the larger negotiation and the give-and-take of bargaining. By taking them off the table ahead of joining, prospective members were removing their own bargaining chips.

In any case, each existing member had the ability to decide whether the new entrant has made a reasonable case for admission and had been sufficiently persuasive in arguing that it will fulfill the high quality aspirations of the group as a whole. If the new applicant survived this set of challenges, the issue of membership has to be taken up again by the group. Finally, if the TPP membership agreed, domestic procedures in the member countries had to be completed before the new country can sit at the table.<sup>25</sup>

The nine TPP members first exchanged market access offers in January 2011. Six sessions were held afterwards: in Santiago, Chile, in February; Singapore in April; Hanoi, Vietnam, in June; Chicago in September; Lima, Peru, in October; and round 10 in Kuala Lumpur, Malaysia, in December. TPP gatherings of one sort or another were also always held on the sidelines of APEC meetings (trade ministers and often chief negotiators meeting at senior officials meetings and TPP leaders meeting at the end of the year summits). In addition, many chapter teams held intercessional meetings, separate from full negotiating rounds. Finally, various officials held discussions of the TPP as a whole, as well as specific issues during bilateral visits of one kind or another throughout the negotiations.

The 2011 meetings were heavily focused on substance, driven by the first important self-imposed deadline for completion of the APEC Leader's Meeting in November in Honolulu, Hawaii. Despite the grueling negotiating calendar that saw thousands of officials

flying around the world, it was not possible to reach a complete agreement by November. Instead, officials were left to issue the “broad outlines” of the agreement instead.<sup>26</sup>

The outlines noted the sweeping nature of the TPP agreement. In addition to market access for goods and services, the FTA would cover telecommunications, sanitary and phytosanitary (SPS) rules, technical barriers to trade (TBT), government procurement, labor rights, legal issues, environment, e-commerce, customs and competition. This short document was carefully crafted to explain what was under negotiation and to give some hint about the content of the agreement in certain areas.

The outlines were shaped, in part, by something innovative about the TPP negotiations. Starting in round 6 in Singapore, officials began to schedule parallel “stakeholder” meetings. Informal outreach and communication with the business and NGO community had been held earlier, but this was formalized and extended through subsequent rounds. Registered stakeholders were given the opportunity to make presentations to officials at each meeting. In later rounds, stakeholders were encouraged to stand beside tables to facilitate more intimate discussions with negotiators. Some delegations also met privately with stakeholders to discuss specific issues and possible solutions.

The stakeholder input process was especially important for briefing officials on issues that cut across multiple chapters or for allowing business leaders, NGOs and some academics to meet with country officials where the regular process of soliciting feedback on proposed trade agreements was weak. For example, one firm discussed the different regulations in the Americas and in Asia for measuring truck length. Given quite different procedures for meeting length standards, semi-tractor truck cabs certified for use in one market would not be used in different markets. In another meeting, a developing country company highlighted mobile connectivity and asked for specific changes in regulatory policy in some of the TPP

members to bring down the cost of mobile roaming rates for members. Some stakeholders participated in every round and others attended only one.

The stakeholder process was especially critical in the TPP given the paucity of information leaking in and out of the negotiations. From the beginning, officials opted to keep tight control over information. In a large, complex, multiparty negotiation, keeping specific negotiating positions from being leaked is important. If a country were to have its high or low offers revealed prematurely, for example, it could dramatically squeeze the range of options on the table for resolving any given issue because it could lock officials into taking such positions. The “core” contents of trade negotiations in the past have nearly always been conducted in secret, without public comment on offers or draft texts. In addition, officials were initially working towards having the entire agreement concluded within the first two years. This—ambitious and unrealistic goal—may have made it easier to keep information tightly circumscribed, as everyone would know all about the details in relatively short order.

However, as the agreement stretched into the third, and then fourth, years, keeping tight rein over information became more problematic. Rather than respond by relaxing the rules on letting (at least some) knowledge flow out, officials seemed to get less talkative.<sup>27</sup> The five page “broad outlines” agreement issued in November 2011 represented the most comprehensive release of details on the talks in nearly two years. The stakeholder process was even discontinued at the end of 2013 when members stopped holding “rounds” and began hosting “informal” rounds or “check in sessions” instead.<sup>28</sup>

## **7.0 The Long Middle Slog**

After the first “deadline” passed without completion, a bit of the air went out of the TPP balloon. Officials had been working at a breakneck pace in an attempt to conclude the agreement. As the end of the 2011 loomed, most delegates were exhausted. The only

chapter that was “closed” covered SMEs. Since this was basically a commitment to open a website to encourage SME participation in member countries, this was not a significant accomplishment. The rest of the deal was still subject to deep disagreements. The TPP follows the “single undertaking” rules drawn from the WTO that also largely prevents countries from closing any chapter until everything in the entire agreement was completed.<sup>29</sup>

Countries were not eager to host negotiating rounds. It was an expensive proposition and time consuming. It meant finding a venue not just for all the officials from each of the negotiating chapters from 9 participants, but all their extra officials. For instance, embassy officials often turned up to join their colleagues in specific rounds. Plus, the stakeholders had to be accommodated. In 2012, many of the rounds were held in the United States: Dallas in May; San Diego in July; Leesburg, Virginia in September; and Auckland, New Zealand in December.

One of the most notable changes in 2012 was the addition of two new members: Canada and Mexico. Canada had expressed interest in joining the agreement much earlier, but was rebuffed, largely out of concerns about whether it would open its dairy and poultry supply management systems to greater competition. In June, however, the TPP members reversed course and agreed to consider Canadian membership. Mexico immediately argued that admitting Canada, but not Mexico, would be problematic given the tight integration of the North American markets under the North American Free Trade Agreement (NAFTA).

The ninety day comment period in the U.S. meant that the two countries did not join the talks until the 15<sup>th</sup> round of negotiations in New Zealand in December 2012. The addition of two new members complicated the resolution of the agreement. Although Mexico, for example, had signed many FTAs with parties, not all TPP members had past experience working with Mexico. Because Mexico (and Canada) had preferential access to the U.S. market under NAFTA, some of the issues under discussion in the TPP became more

sensitive. Granting preferences to TPP members could undermine existing NAFTA preferences. As one example, textiles market access became considerably more fraught, and resolution of remaining issues slowed.

Japan had been widely expected to join the TPP at the same time as Canada and Mexico. Multiple Japanese prime ministers had announced plans to enter into the talks. But as 2012 transitioned to 2013, Japan remained on the sidelines.

## **8.0 Heading for Another Missed Deadline**

The Obama administration announced its intentions to wrap up talks by the end of year. This put pressure back on the negotiating teams to quickly absorb the two new entrants while working through the more controversial issues on the agenda.<sup>30</sup>

The last three official rounds for the agreement were held in Singapore in March; in Lima, Peru in May; and in Kota Kinabalu, Malaysia in July. After this, “formal” negotiating rounds were discontinued. In part, it was because many chapters, like telecommunications, had either been finished or had reached the limits of what the country delegations could accomplish. Any remaining sticking points could only be resolved at a higher level of authority. As previously noted, the end of formal rounds also meant the end of stakeholder meetings. Finally, it was getting difficult to explain how the agreement was not yet finished, as the round count rapidly headed past 20.

Also seriously complicating the ability of officials to complete the negotiations was the accession of Japan for the last few hours of the last round in Malaysia in July 2013. Japanese delegates were not able to participate in the negotiations, but were instead briefed extensively on the status of various chapters in the agreement. As the USTR Press Briefing noted, with Japan’s entry, TPP countries accounted for nearly 40 percent of global GDP and about one-third of all world trade.<sup>31</sup>



Nevertheless, the Americans continued to press for a concluding date of end 2013. Although formal rounds of negotiations were discontinued, “informal” rounds went ahead. Two were held under the title of TPP Chief Negotiator’s Meetings in Washington, DC in September and in Salt Lake City, Utah in November. All these activities culminated in the first lengthy meeting of TPP Trade Ministers in Singapore in December 2013. Despite locking ministers in a series of rooms for across two days, in sets of bilateral and plenary sessions designed to break through the remaining sensitive issues, at the conclusion of the meeting, officials could only report progress on defining “landing zones” for the agreement overall.<sup>32</sup>

## **9.0 Ramping Up Political Engagement**

The TPP Ministers urged their negotiating delegates to redouble their efforts to resolve outstanding issues, particularly those relating to the rules and texts. In conjunction with increased political scrutiny, trade ministers held two additional meetings in Singapore in February and May 2014. Neither resulted in the breakthrough necessary to close the agreement.<sup>33</sup>

The U.S. political calendar, however, was rapidly closing the window for potential closure of the TPP agreement. If the leaders hoped to finish the deal in time for a Congressional vote in the United States before Barack Obama left office in January 2017, the timing to conclude was very tight. Congress members could not be expected to vote on a trade bill during a presidential election cycle, as there are no upsides for individual members from voting on trade deals. The potential to lose an election based in part on a trade vote, by contrast, is high.

With elections in November 2016, the TPP vote would be easiest if done prior to mid year 2015.<sup>34</sup> This would put a vote after the midterm elections on November 4, 2014, but

early enough in the electoral cycle before the next election to make members more comfortable with voting on potentially controversial bills.

Working backwards from this calendar, the “informal” rounds in Ho Chi Minh City in May, Ottawa in July and Hanoi in September 2014 assumed greater importance. In order to properly tee up the agreement for political decisions, the remaining negotiating teams and chief negotiators needed to be able to deliver a comprehensive set of options to political leaders.

Leaders were scheduled to meet at the APEC summit in Beijing in November 10-11, 2014. This “decision forcing event” became the backdrop of ongoing negotiations. In Hanoi, officials worked to conclude the last textual issues, putting together various options and policy packages for the remaining sensitive issues. Chief negotiators tried to whittle down the list of problematic areas for ministerial intervention by settling on as many outcomes as possible across the entire agreement as directed by leaders.

## **10.0 Landing Zones and Final Packages**

The TPP agreement contains twenty-nine chapters. Trying to get closure has been a bit like attempting to solve a 12-sided Rubik’s cube. The agreement is interlocking, with provisional acceptance in one area often dependent on receiving a set of benefits elsewhere. Multiplied by 12 participating countries, getting a deal done has been difficult.

Chapters were never “closed.”<sup>35</sup> Instead, everything remained in play until the final agreement was done. This meant that officials trying to craft the deal were left with the language of “narrowing landing zones” and creating “final packages” for review by ministers and leaders. What this meant in practice was that chief negotiators had to write up sets of options for consideration by leaders and let them make political decisions for outstanding sensitive issues.

The most problematic issues as the agreement headed towards the end of year were mostly items that were called out as sensitive from the earliest days of the deal.<sup>36</sup>

One of the most difficult areas remained market access for goods. Because the TPP was intended to cover all goods without exception at a high level of ambition, it meant that countries could not shield sensitive items like dairy, rice, beef, or sugar from markets opening in some way to other TPP partners. For most of 2014, the United States and Japan were negotiating regularly around tariff reductions on a limited number of agricultural products (the five so-called “sacred” items: dairy, rice, beef/pork, wheat and sugar) as well as tariffs and rules around autos.<sup>37</sup> Until the other TPP members could see what Japan was willing to do (or allowed to do) on these items, they were also reluctant to put their own sensitive market access issues on the table in a meaningful way. If Japan, for example, were allowed minimal market opening on beef, other members could ask for similar treatment on their issues.

The rules of origin (ROO) negotiations continued to take significant time. These rules are designed to allow the goods from only TPP member countries from taking advantage of the preferences granted by the agreement. If non-member goods could sneak in, somehow, it would undermine the market access provisions of the deal. Therefore, ROOs are quite important. They also interact with tariff concessions. It is theoretically possible to create a completely open, zero tariff world but craft such difficult ROOs that no products actually qualify for the zero tariff benefits. In other words, a product might be eligible for paying no tariffs on the product, but to meet the ROO criteria, a company might have to include, say, 60% of the content in the item from member countries only. Worse yet, the procedures necessary to prove that the product meets 60% originating criteria might be so onerous and challenging that most firms would just give up and use the Most Favored Nation (MFN) tariff rates that are available to all WTO member companies instead (even if the MFN

tariff is higher than zero). Alternatively, easier ROOs (specifying lower content, for example) can make even relatively higher tariffs less of a problem for firms.

The TPP negotiations on ROOs dragged on for the entire duration of the overall negotiations. Because officials opted for product-specific rules, it meant that every single tariff line of the schedules had to be checked for matching ROOs.<sup>38</sup> With product-specific ROOs in place, developing cumulation rules was even more problematic.<sup>39</sup> Under cumulation, firms are encouraged to “add up” the member content in goods products towards meeting the overall content required by ROO provisions. In a world of value or supply chains, companies rarely source all the materials and inputs they need from one country alone. Instead, they may source from a large variety of regional or global suppliers. Agreements like the TPP are intended, in part, to provide additional benefits to firms that buy inputs from other TPP member countries. But the specific provisions of the TPP may make this process challenging, since a firm manufacturing a complex item will potentially need to check the specific ROO in place for each and every component in the final product before satisfying the overall ROO across TPP originating goods. This was especially problematic for items like textiles or footwear which can combine many input items—each with different rules to determine whether the item can “count” towards TPP content and get lower tariff rates on the final product into TPP member countries.

Other sensitive issues still unresolved as late as the Hanoi meetings in September were the extent and reach of IP rights provisions, scheduling of exceptions for state-owned enterprises, scheduling of exceptions to services and investment liberalization, concluding the environment chapter, and discussing the reach of dispute settlement. Many items in these chapters and others had to be narrowed down to a small number of options for political intervention, as officials simply could not close out many topics on their own.

## **11.0 Getting it Done at Last**

As summer turned into fall 2014, many officials insisted that their focus remained on getting the agreement concluded at the highest possible levels of quality without worrying about the specific timelines or process of ratification and implementation. While admirable, the quest for a perfect agreement was likely to prove quixotic. Getting an excellent deal finished that would never see the light of day, because members would be unable or uninterested in implementing the provisions, was also clearly not helpful.

Unfortunately, in any negotiation and especially in multiparty talks, specific members have an individual incentive to stall as long as possible on making final concessions in the hope that a race to the finish line will encourage some members to relax their standards and accept the deal on the table rather than risk the collapse of the entire agreement. But such a strategy is difficult and perilous to effectively implement. If every member opts to hold the most sensitive issues and refuses to compromise, clearly the deal will never get done. If concessions are granted too late, there may literally not be enough time to pull together the final deal (when, for example, the TPP leaders are scheduled for a press conference). Last minute deal-making is common in trade agreements, but can be very tricky to implement in a large, complicated negotiation rather than in smaller bilateral arrangements or less complex regional deals.

A shaving of quality at the last minute to get the TPP past the finish line is inevitable. This will be problematic for officials who have made much of the “high quality, 21<sup>st</sup> century” aspects of the agreement from the very beginning. After everyone has been led to expect the ideal agreement, any deviation from perfection will be disappointing to many. However, the messy reality of politics means that every member country will have to accept compromises in order to slot all 12 rows of the Rubik’s cube into alignment at the end. In the end, the TPP

will not reach the 100%, no exceptions allowed, aspirational goal set from the beginning. But it is likely to remain the most ambitious, deepest and broadest trade agreement signed to date and become the benchmark for similar deals elsewhere.<sup>40</sup> Such an outcome will be worthy of the tortured and lengthy negotiating path that it would have taken to reach the finish line.

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<sup>1</sup> For a fuller account of the early evolution of the TPP and a review of the contents of the P4, see C.L. Lim, Deborah Elms and Patrick Low (eds.), *The Trans-Pacific Partnership: A Quest for a 21<sup>st</sup> Century Trade Agreement* (Cambridge, 2012).

<sup>2</sup> Technically, it was three countries, as Brunei joined very late in the process.

<sup>3</sup> See Elms and Lim, “An Overview and Snapshot of the TPP Negotiations,” in Lim, Elms and Low, p. 23-24.

<sup>4</sup> Susan Schwab reportedly said, "Participation could provide a pathway to broader Asia-Pacific regional economic integration with like minded countries committed to high-standard agreements." See “NZ Welcomes US Entering Trade Talks,” *Business Day*, February 5, 2008, accessed August 29, 2014, at: <http://www.stuff.co.nz/business/253540/NZ-welcomes-US-entering-P4-trade-talks>

<sup>5</sup> Given some domestic issues, Vietnam is often described as being an “observer” at the outset while it sorted out the details at home. However, from the beginning, Vietnamese officials participated as full members (and the TPP has never had an “observer” or “associate” category of membership). Thus, from the earliest days of the agreement, potential member countries had to decide whether or not to participate without the option of observing the proceedings. This point becomes important later in the negotiations since countries like Japan and South Korea who were hesitant about getting in were not able to transition from observer to full member (something that is possible in many other international negotiating forums).

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<sup>6</sup> Of course, if the incoming team had really found participation objectionable, they could have found some way to get out of it or kept the American role limited to observing the missing two chapters only rather than expand the entire agreement.

<sup>7</sup> Susan Schwab, remarks at the Lee Kwan Yew School of Public Policy, Singapore, November 10, 2009. At the time, the Japanese were promoting a plan to integrate Asian trade (the grouping later became the ASEAN+6 and is now known as the Regional Comprehensive Economic Partnership (RCEP)). Australia's leader Kevin Rudd was pushing for an Asia-wide agreement as well, the Asia Pacific Community, which had an economic or trade component (although the first articulation of this plan included the United States in June 2008).

<sup>8</sup> Recall that the Administration was also facing an uphill battle getting the existing FTA agreements with South Korea, Colombia and Peru through Congress.

<sup>9</sup> Table 2.2 shows the overlapping FTAs in member countries. See Elms and Lim, "An Overview and Snapshot of the TPP Negotiations," in Lim, Elms and Low, p. 33-34.

<sup>10</sup> For more on Australia's motivations, see Ann Capling and John Ravenhill, "The Trans-Pacific Partnership: The Australian Perspective," 2012, accessed at [http://www.alliance21.org.au/site/assets/media/docs/TradeInvestment/Cap-Rav\\_TPPAustralianPerspective\\_1.pdf](http://www.alliance21.org.au/site/assets/media/docs/TradeInvestment/Cap-Rav_TPPAustralianPerspective_1.pdf)

<sup>11</sup> President Barack Obama at Suntory Hall, Tokyo, Japan, November 14, 2009.

<sup>12</sup> Clinton, "America's Pacific Century," *Foreign Policy*, October 11, 2011.

<sup>13</sup> Kirk Campbell and Brian Andrews, "Explaining the U.S. 'Pivot' to Asia," Chatham House, *Americas* 2013/01, August 2013, accessed at [http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Americas/0813pp\\_pi\\_vottoasia.pdf](http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Americas/0813pp_pi_vottoasia.pdf) on August 29, 2014.

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<sup>14</sup> Ian F. Fergusson and Bruce Vaughn “The Trans-Pacific Partnership Agreement.” *Congressional Research Service*, December 12, 2011, accessed at: <http://www.fas.org/sgp/crs/row/R40502.pdf>

<sup>15</sup> “Text of USTR Letters to Congressional Leaders,” December 14, 2009, USTR, [http://www.ustr.gov/webfm\\_send/1559](http://www.ustr.gov/webfm_send/1559), accessed August 29, 2014.

<sup>16</sup> Ian F. Fergusson and Bruce Vaughn “The Trans-Pacific Partnership Agreement.” *Congressional Research Service*, December 12, 2011, accessed at: <http://www.fas.org/sgp/crs/row/R40502.pdf>

<sup>17</sup> For the history of TPA, see I.M. Destler, *American Trade Politics*, 4<sup>th</sup> edition, (Washington, DC: International Institute of Economics), 2005.

<sup>18</sup> The last time legislation was passed on TPA was in 2002.

<sup>19</sup> Ways and Means Ranking Member Dave Camp (R-MI) and Trade Subcommittee Ranking Member Kevin Brady (R-TX) made a statement in June 2009 noting the lack of TPA authority overall, on the second anniversary of the expiry of the agreement. Both men asked the administration to renew the bill. Camp wrote, “It is past time for Congress to give the President TPA and put back in play one of our best weapons to create economic opportunity for American workers. Just as I supported TPA for Presidents Clinton and Bush, I support TPA for President Obama.” See Camp, Brady Statement on the Second Anniversary of the Expiration of Trade Promotion Authority, June 30, 2009, accessed on September 1, 2014, at: [http://insidetrade.com//index.php?option=com\\_iwppfile&file=pdf13/wto2009\\_3247.pdf](http://insidetrade.com//index.php?option=com_iwppfile&file=pdf13/wto2009_3247.pdf)

<sup>20</sup> See Deborah Elms, “The Trans-Pacific Partnership: The Challenges of Unraveling the Noodle Bowl,” *International Negotiation*, 18 (2013), 25-47.

<sup>21</sup> Interviews with TPP officials by the author over the course of the negotiations.



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<sup>22</sup> See, for example, Brian Slattery, Bryan Riley, and Nicolas Loris, “Sink the Jones Act: Restoring America’s Competitive Advantage in Maritime-Related Industries” *Background* #2886, Heritage Foundation, May 22, 2014.

<sup>23</sup> In the end, officials with experience negotiating other agreements won out and most of the TPP follows “traditional” chapters.

<sup>24</sup> The TPP, after all, is a voluntary agreement. Potential members that were uncomfortable with such a requirement could stay out of the deal.

<sup>25</sup> In practice, this largely means waiting for the 90 day “window” to close for the United States to complete the “as if” conditions of TPA. However, for Malaysian entry into the TPP, the time period was not necessary. Instead, USTR argued that Congress had already granted permission for trade negotiations with Kuala Lumpur under a dormant bilateral FTA authorization.

<sup>26</sup> See <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>

<sup>27</sup> This is likely to come back to haunt officials in the run up to ratification and implementation in many countries, since there is limited public or even business support for the TPP when no one knows much (or anything) about it. Plus, in a knowledge vacuum, opponents of the agreement have had near free-reign to set the narrative.

<sup>28</sup> Stakeholders and media continued to travel to TPP “informal” rounds anyway, but in fewer numbers. If anyone had kept track, the record would likely show that the later meetings were mostly attended by the largest multinational firms with deep enough pockets to justify the expense even without a formal presentation. Officials said they discontinued stakeholder meetings because they had “learned everything they needed” by the end of more than a dozen such meetings.

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<sup>29</sup> This “rule” was reinforced by another convention that prevented newly admitted members from discussing any text that had been “closed” or taken out of brackets (where the use of brackets indicates continuing disagreement among delegates about the exact wording of the text).

<sup>30</sup> For an update of the sticking points in the agenda, see Deborah Elms, “The Trans-Pacific Partnership Negotiations: Some Outstanding Issues for the Final Stretch,” *Asian Journal of WTO and International Health Law and Policy* (AJWH), VOL. 8:371, September 2013

<sup>31</sup> USTR, “Statement on the 18th Round of Trans-Pacific Partnership Negotiations in Kota Kinabalu, Malaysia” at <http://www.ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/round-18-malaysia>.

<sup>32</sup> See the extraordinarily brief “STATEMENT OF THE MINISTERS AND HEADS OF DELEGATION FOR THE TRANS- PACIFIC PARTNERSHIP COUNTRIES” December 10, 2013, accessed at: [http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/STATEMENT%20OF%20THE%20MINISTERS%20AND%20HEADS%20OF%20DELEGATION%20FOR%20THE%20TRANS\\_2.pdf](http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/STATEMENT%20OF%20THE%20MINISTERS%20AND%20HEADS%20OF%20DELEGATION%20FOR%20THE%20TRANS_2.pdf)

<sup>33</sup> And Singapore was left with unfortunate headlines that read, “Singapore hosts failed ministerials.” See, for example, “Singapore TPP talks fail to reach a deal,” Siti Rahil and Kayo Mimizuka, *The Japan Times*, February 25, 2014 or “TPP Ministers Chart 'Pathway' Forward, But Show Few Signs Of Progress,” *Inside US Trade*, May 23, 2014.

<sup>34</sup> This is a testament to the length of the U.S. presidential race. During every election, the entire U.S. House of Representatives is also running for office as well as 1/3 of the Senate members. For these members of Congress, a trade vote too close to the election decision could be very problematic.

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<sup>35</sup> Except for the SME chapter, as noted earlier. This made it difficult for many people to judge how close or how far away the TPP might be from completion and complicated life for reporters who wanted a simple metric to assess progress with each round.

<sup>36</sup> See, for example, Lim, Elms and Low's book that highlighted all the problematic issue areas except for State Owned Enterprises (SOEs), even though it was written in late 2011/early 2012.

<sup>37</sup> The agreement was largely conducted plurilaterally (i.e., among all 12 members), except for the market access provisions for goods that used a mix of bilateral and plurilateral negotiating approaches. For details, see Elms, "The Trans-Pacific Partnership: The Challenges of Unraveling the Noodle Bowl," *International Negotiation*, 18 (2013), 25-47.

<sup>38</sup> An alternative (and more market opening) approach would have been to specify rules for all classes of goods or to allow very minimal sets of rules (for all chemicals or all textiles or all electronic items).

<sup>39</sup> For more details on the complex structural nature of the TPP negotiations, with multiple schedules for different member countries, see Elms, "The Trans-Pacific Partnership: The Challenges of Unraveling the Noodle Bowl," *International Negotiation*, 18 (2013), 25-47

<sup>40</sup> Outside, of course, of the European Union which remains unique.