



The Trans-Pacific Partnership Agreement

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Summary

The economic and strategic architectures of Asia are evolving. One part of this evolving architecture is the Trans-Pacific Partnership Agreement (TPP), a free trade agreement that includes nations on both sides of the Pacific. The existing TPP, which originally came into effect in 2006, consists of Brunei, Chile, New Zealand, and Singapore. The United States, Australia, Peru, and Vietnam have committed themselves to joining and expanding this group. The third round of discussions among the eight countries took place in Brunei, during the week of October 4, 2010. The third round saw the formal inclusion of Malaysia in the negotiations.

Other architectures, such as the Association of South East Asian Nations (ASEAN), Asia-Pacific Economic Cooperation (APEC) forum, and the East Asia Summit (EAS) have both economic and strategic aspects. They can be grouped into two categories: (1) groupings that are Asia-centric in approach or origins and exclude the United States, and (2) those that are Trans-Pacific in nature and that include, or would include, the United States and other Western Hemispheric nations. The TPP is one vehicle that could be used to shape the U.S. agenda with the region. The United States, by signaling its intention to join the EAS and by working to elevate its relationship with ASEAN to a more strategic level, appears to be shaping regional architectures in a way that will be more inclusive and trans-Pacific in nature.

Asia is viewed as of vital importance to U.S. trade and security interests. According to the U.S. Trade Representative, the Asia-Pacific region is a key driver of global economic growth and accounts for nearly 60% of global GDP and roughly 50% of international trade. Since 1990, Asia-Pacific goods trade has increased 300% while there has been a 400% increase in global investment in the region. The United States has pursued its regional trade interests both bilaterally and through multilateral groupings such as APEC, which has linked the Western Hemisphere with Asia. There appears to be a correlation between increasing intra-regional economic activity and increasing intra-regional political and diplomatic cooperation. Many observers view the more recent intra-Asian Association of Southeast Asian States (ASEAN) plus three—China, Japan, South Korea—and the ASEAN plus six (also known as the East Asia Summit)—China, Japan, South Korea, India, Australia, New Zealand—groups as having attracted more interest within the region in recent years. China's rapidly expanding economy and Japan's developed economy have made them attractive trading partners to many Asian nations. Until recently, many regional states also viewed the United States as having been distracted by events in Iraq and Afghanistan. This had led some to increasingly look to China and Japan as key partners. China may be shifting to a more assertive posture in the region, which may affect relations in the region. Secretary of State Clinton attended the East Asia Summit in Hanoi in October 2010 and President Obama stated he plans to attend the 2011 East Asia Summit in Jakarta.

U.S. participation in the TPP involves the negotiation of FTAs with New Zealand, Brunei, Malaysia, and potentially, Vietnam. The United States currently has FTAs in force with Chile, Singapore, Australia, and Peru. Bilateral negotiations with New Zealand may focus on agricultural goods such as beef and dairy products. The possible inclusion of Vietnam has proven controversial from the standpoint of certain U.S. industry groups, such as textiles and apparel, as well as those concerned with labor, human rights and intellectual property issues. The involvement of Vietnam could add a higher level of difficulty, yet is illustrative of the challenges associated with developing a truly Asia-Pacific-wide trade grouping. All the potential parties may face complex negotiations in integrating the myriad FTAs that already exist between some TPP parties.

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Introduction¹

The Trans-Pacific Strategic Economic Partnership (TPP) was initially conceived in 2003 by Singapore, New Zealand, and Chile as a path to trade liberalization in the Asia-Pacific region. Brunei joined negotiations in 2005, and the TPP came into force in 2006. In March 2008, the United States joined the negotiations to conclude the investment and financial services provisions. The United States already has Free Trade Agreements (FTA) with TPP members Singapore and Chile and with potential TPP partners Australia and Peru. President Bush notified Congress of his intention to negotiate with the existing TPP members on September 22, 2008, and with other potential members, Australia, Peru, and Vietnam on December 30, 2008. This group of eight countries has conducted three rounds of negotiations in 2010. Malaysia was accepted as the ninth negotiating partner in October 2010.

On November 14, 2009, President Obama committed the United States to engage with the TPP countries “with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement.”² President Obama also stated in his November 2009 Tokyo speech that,

the growth of multilateral organizations can advance the security and prosperity of this region. I know that the United States has been disengaged from these 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.

U.S. Trade Representative Ron Kirk formally notified Congress of the Administration’s intention to enter into negotiations with the TPP countries on December 14, 2009. That notification set off a 90-day timeline under the 2002 trade promotion authority legislation (TPA), now expired, for congressional consultations prior to the beginning of negotiations.

The first negotiations took place in Melbourne, Australia, during the week of March 15, 2010. Ten official-level negotiating groups were for areas including industrial goods, agriculture, sanitary and phyto-sanitary standards, telecommunications, financial services, customs, rules of origin, government procurement, environment, and trade capacity building.

The second formal negotiating session took place during the week of June 14, 2010, in San Francisco. Topics such as the “architecture” of the agreement (i.e., whether there would be a common market access schedule or whether schedules from existing FTAs would be allowed to

¹ Background information for this report was derived from presentations made by Ambassador John Veroneau, Deputy U.S. Trade Representative (USTR), Mariano Fernandez, Ambassador of Chile to the United States, Roy Ferguson, Ambassador of New Zealand to the United States, and Chan Heng Chee, Ambassador of Singapore to the United States at a Pan-Pacific Forum “Energizing a Renewed Trans-Pacific Partnership,” on Thursday, November 6, 2008, as well as Assistant USTR for Southeast Asia and the Pacific, Office of the USTR, Barbara Weisel and Jeffery Schott, Senior Fellow, Petersen Institute for International Economics, “US Engagement in the Asia-Pacific: The Decision to Join the Trans-Pacific Strategic Economic Partnership,” *East West Center*, October 30, 2008. Other Department of Defense and Department of State officers, embassy officials, and public policy institution analysts were also consulted.

² Remarks of President Obama at Suntory Hall, Tokyo, Japan, November 14, 2009.

continue)³; the relationship between the current FTAs and the potential new agreement; and how certain cross-cutting issues (such as regulatory coherence) and new issues could be accommodated in the agreement. Each of the chapter committees also met. An “intersessional” meeting was held on August 20-21, 2010, in Peru to try to resolve the architecture of market access schedules but no agreement was reached.

The third negotiating session took place during the week of October 4 in Brunei. Negotiations were held in the areas of industrial goods, agriculture, textiles, sanitary and phyto-sanitary standards, services, investment, financial services, intellectual property, environment, telecommunications, e-commerce, textiles, customs, technical barriers to trade, and trade capacity building. Discussions also began on cross-cutting issues including promoting competitiveness, supply chain development, trade promotion for small- and medium-sized enterprises, and development.

Analysts, observers, and decision makers generally believe that the inclusion of the United States could act as a catalyst for other Asia-Pacific states to join. In this way, the TPP is viewed as a potential building block to a larger Free Trade Area of the Asia Pacific (FTAAP).⁴ This move is significant in that it will likely be seen as a U.S. policy response to the rapidly increasing economic and strategic linkages among Asian states, some of which have excluded the United States and the Americas in recent years. At the first negotiating session, New Zealand Trade Minister Tim Groser speculated that the United States would use the TPP “as the primary vehicle for putting the U.S. into the game of Asia-Pacific integration.” He added that the value-added of the TPP for the United States would be to expand to other countries “so it can only make sense in terms of the world’s number one economic superpower if this is indeed a building block for something larger.”⁵

Some observers believe the TPP membership will expand U.S. trade with Asia while strengthening U.S. ties with the region. The United States remains a leading trade partner for nearly all Asian states. Despite this, the relative importance of the United States as a trading partner for many Asian states is declining. Fear among some U.S. policy and trade analysts that the United States was running the risk of being marginalized by not responding to the proliferation of trade agreements that emerged in Asia in recent years appears to have been a key factor behind decisions to more fully engage Asian regional architectures including the TPP. By engaging in the TPP, the United States is changing this dynamic, both by seeking to join this new trading bloc and by shaping it to be consistent with already-existing comprehensive U.S. FTAs.

The TPP negotiations may become the signature U.S. trade policy under President Obama. While the United States continues to engage with its trading partners in the World Trade Organization over the ongoing Doha Round negotiations, agreement does not appear to be within reach. Also due to various difficulties surrounding each of the pending FTAs with Colombia, Panama, and Korea, the Administration has not yet chosen to bring them to Congress for consideration under

³ See discussion below in the “A Comprehensive Trade Agreement” section.

⁴ “The Trans-Pacific Partnership-Moving Forward,” Press Release of Australian Minister for Trade Simon Crean, November 14, 2009.

⁵ quoted in “Trans-Pacific Partnership Talks Conclude, Malaysia Weighs Joining Eight-Nation Talks,” *International Trade Reporter*, March 25, 2010.

trade promotion authority. Given that the United States has comprehensive FTAs with four of the potential TPP parties, negotiation of a TPP agreement may present the new Administration with the means to pursue a fresh trade strategy unencumbered by present trade controversies.

However, other trade analysts view the increasing web of bilateral and regional trade agreements with suspicion. Critics assert that the emphasis on regional and bilateral negotiations undermines the World Trade Organization (WTO) and increases the risk of trade diversion. Trade diversion occurs when the existence of lower tariffs under a trade agreement causes trade to be diverted away from a more efficient producer outside the trading bloc to a producer inside the bloc. What also results from the plethora of negotiated FTAs is, according to one economist, “a ‘spaghetti bowl’ of multiple tariffs depending on the source of a product and, in turn, a flood of rules of origin to determine which source is to be assigned to a product.”⁶

Existing and Potential Membership

As the United States entered into exploratory discussions to join Brunei, Chile, New Zealand, and Singapore in the TPP, then Assistant Secretary of State for Economic, Energy and Business Affairs Daniel Sullivan stated his view that the TPP will likely expand its membership and “could provide as one possible foundation for, and build momentum towards, a Free Trade Area of the Asia-Pacific.”⁷ Sullivan also described the agreement as supporting U.S. interests in the areas of “intellectual property rights, standards, transparency, labor rights, and the environment.”⁸

It is envisaged that the TPP will add members in successive tranches. On November 20, 2008, Australia announced that it would participate in the TPP negotiations. Former Australian Prime Minister Kevin Rudd, who is now Australia’s foreign minister in the government of Prime Minister Julia Gillard, called for an Asia-Pacific community that would include the United States and have a broad mandate that would include political, security, economic, and global issues such as climate change.⁹ Former President Bush’s notification to Congress of December 30, 2008, indicated that Australia, Peru, and Vietnam would also be potential negotiating partners. This incremental approach to construct a comprehensive free trade agreement may make negotiations for the entry of additional members more manageable. It is likely that Congress may wish to consider or to examine the entry of future members.

Chile, New Zealand, and Singapore all expressed their support for the inclusion of the United States in the TPP as well as their desire that this will act as a catalyst for further expansion of the TPP. Chile is a relatively isolated trade-dependent nation that is looking to Asia to expand its trade opportunities. Chile views the TPP as a way to help it navigate its course in an era of increased globalization and as an instrument for Chile to try to gain access to Asian markets and to ensure that it is not isolated outside international trading arrangements in Asia.

⁶ Jagdish Bhagwati, “From Seattle to Doha,” *Foreign Affairs*, December 2005.

⁷ Daniel Sullivan, Assistant Secretary of State for Economic, Energy and Business Affairs, “The Administration’s Focus on Promoting Free Trade and Enhancing U.S. Trade and Export Opportunities,” September 8, 2008.

⁸ *Ibid.*

⁹ “Asia-Pacific Leaders Welcome Obama’s Commitment to Trans Pacific Partnership,” *International Trade Reporter*, November 19, 2009.

New Zealand, another trade-dependent country, supports liberalized trade through the WTO process but is also seeking alternative comprehensive free trade relationships in both bilateral and regional forums. New Zealand views the TPP as a way to add some momentum to trade liberalization among Asia-Pacific Economic Cooperation (APEC) member countries.¹⁰ New Zealand also favors the continued engagement of the United States in the region. In this way, it has strategic as well as economic reasons for seeking to include the United States in the TPP.

New Zealand has long sought an FTA with the United States and hopes that its advanced country status and free trade *bona fides* will assist it in a difficult environment for trade expansion. Former New Zealand Prime Minister Helen Clarke stated, “I believe that to [U.S.] Democrats, New Zealand offers very few problems because we are very keen on environment and labor agreements as part of an overall approach to FTAs.”¹¹ U.S. membership in the TPP would place New Zealand on an equal economic footing with other TPP members that have FTAs with the United States. New Zealand Trade Minister Tim Groser welcomed President Obama’s announcement that the United States intends to proceed with the TPP.¹²

Singapore also generally shares New Zealand’s desire to keep the United States strategically and economically engaged in the Asia-Pacific region. Singapore has stated that it favors linking Asia and the Americas as opposed to creating an Asian-only block.¹³ Singapore Prime Minister Lee Hsien Loong stated on November 15, 2009, that “all of us welcomed very much the announcement of the U.S. yesterday to engage with the TPP.”¹⁴

The potential participation of Vietnam in the negotiations may prove more controversial. Vietnam was permitted to participate in the first three rounds as an “associate” member. It is expected that Vietnam will have to make a final decision on its participation prior to the beginning of the fourth round to take place in New Zealand in December 2010. For a grouping primarily of advanced and middle income countries, Vietnam would be the least-developed participant in the negotiations. While it has made great strides in liberalizing its economy and has been granted WTO membership, criticism of its standards on labor rights, intellectual property protection, and corruption remains. It has also come under fire for its human rights policies.

U.S. textile and apparel groups expressed their opposition to the inclusion of Vietnam in TPP negotiations in a March 5, 2009, Trade Policy Staff Committee hearing. The National Association of Manufacturers stressed the barriers to U.S. exports to Vietnam including “poor protection for intellectual property, licensing, standards, regulations, subsidies and a lack of transparency.”¹⁵ However, the perceived willingness of Vietnam to undertake the type of reforms needed to join the TPP, either now or in the future, could serve as a catalyst for other developing countries in the region to undertake such reforms.

¹⁰ “Trans -Pacific Partnership,” *The Daily Post New Zealand*, September 23, 2008.

¹¹ “US Trade Move Big News for NZ: Clark,” *New Zealand Herald*, September 23, 2008.

¹² “Groser Welcomes US Announcement on Trans-Pacific Partnership,” November 13, 2009, beehive.govt.nz

¹³ “Singapore Welcomes US Joining Trans-Pacific Trade Agreement,” *Channel News Asia*, September 22, 2008.

¹⁴ “Asia-Pacific Leaders Welcome Obama’s Commitment to Trans Pacific Partnership,” *International Trade Reporter*, November 19, 2009.

¹⁵ “Possible Inclusion of Vietnam in TPP Talks Sparks Controversy,” *Inside US Trade*, March 6, 2009.

On October 5, 2010, U.S. Trade Representative (USTR) Ron Kirk formally notified Congress of the Administration's intention to negotiate with Malaysia in the context of the TPP after all the participating states unanimously agreed to include Malaysia in the negotiations during the Brunei talks. The United States previously had attempted to negotiate an FTA with Malaysia between 2006 and 2008. However, the negotiations foundered over government procurement preferences for ethnic Malays and the size and scope of services liberalization, among other issues. In his letter to Congress, Ambassador Kirk noted that Malaysia is engaged in extensive domestic economic reform, and that it has assured the United States "it is now prepared to conclude a high standards agreement, including on these issues."¹⁶ For its part, Malaysia views the TPP as an additional step towards integration in the Asian-Pacific region, and, more specifically, as presenting market opening opportunities in the cocoa products, petroleum oils, textiles and apparel, footwear, metal products, and clocks and watches sectors. Some see Malaysia's commitment to the TPP as a method to reinforce the government's economic reform agenda. According to the U.S. Chamber of Commerce, "participation in the TPP will help promote the domestic economic reforms in Malaysia which Prime Minister Najib Razak launched after taking office last year."¹⁷

Some Congressional Reactions to the TPP

Senator Charles Grassley, ranking member of the Committee on Finance, welcomed the first announcement from the Bush Administration that the United States was initiating negotiations to join the group:

Today's announcement is good news. It's in our national interest to strengthen our economic relations with the Trans-Pacific region. Negotiation of this agreement will help further that effort. And it may pave the way to a broader regional trade agreement in the future. If we want to have any influence over that process, we need to get involved. We can't advance our economic interests if we're not at the table.¹⁸

On March 10, 2009, 45 House Members signed a letter to President Obama urging him to continue talks on the TPP. This bipartisan effort was headed by then-Representative Ellen Tauscher and Representative Kevin Brady, who wrote: "We expect the TPP will be a gold standard agreement, eliminating tariffs on all traded goods among members and reducing barriers to trade in services and other sectors beyond standards set in the World Trade Organization."¹⁹

In November 2009, House Ways and Means Committee Chairman Charles Rangel and Trade Subcommittee Chairman Sander Levin stated "the TPP offers both opportunities and challenges.

¹⁶ Letter from Ambassador Ron Kirk to Speaker Nancy Pelosi, October 5, 2010. http://www.ustr.gov/webfm_send/2337

¹⁷ U.S. Chamber of Commerce Press Release, "U.S. Chamber Pleased that Malaysia Is Joining Trans-Pacific Trade Talks, October 6, 2010. <http://www.uschamber.com/press/releases/2010/october/us-chamber-pleased-malaysia-joining-trans-pacific-trade-talks>

¹⁸ "Trans-Pacific Economic Partnership, Pending Trade Agreements," *Congressional Documents and Publications*, September 22, 2008.

¹⁹ "New Democrats Urge Obama to Continue TPP Talks," *Inside US Trade*, March 13, 2009.

Done effectively, it can be of mutual economic benefit.... It also presents the challenge ... of grappling with the inclusion of a new country, Vietnam.”²⁰

In January 2010, members of the House Trade Working Group sent a letter to USTR Ron Kirk outlining their objectives for the negotiations. The group sees the negotiations as an opportunity to create a new trade agreement “paradigm” and to reform the present U.S. trade agreement model. For example, they wrote that the TPP could build upon provisions of the May 2007 Agreement on labor, the environment, and patent rules on medicine. They also wrote that the TPP could follow the provisions of the U.S.-Australia FTA not to include investor-state dispute resolution procedures outside a country’s judicial system. This group also expressed concerns about negotiating trade agreements with countries with authoritarian governments such as Brunei or Vietnam and favored the inclusion of democracy clauses in trade agreements.²¹

On March 11, 2010, 30 Senators wrote to USTR Kirk to express their concern about additional market access for New Zealand dairy products under the TPP. The letter claims that losses to U.S. dairy producers could reach \$20 billion over 10 years if tariff-rate quotas are completely phased out under TPP. The authors maintain “that an expansion of U.S.-New Zealand dairy trade would further open the U.S. to these imports while providing little additional market to American farmers in New Zealand and other Pacific countries.”²²

On October 6, 2010, Ways and Means Trade Subcommittee Ranking Member Kevin Brady reacted to the announcement of the inclusion of Malaysia in the TPP talks: “I welcome the inclusion of Malaysia in the TPP talks. Malaysia is an important country in the fast-growing Asia-Pacific region, home to millions of potential customers for U.S. goods and services. This creates an opportunity to strengthen economic ties between our two countries and expand the TPP’s regional reach.”²³

U.S. Objectives and Interests

While trade with the current TPP nations represents a relatively small part of U.S. trade with Asia and the world (see **Table 1**, below), U.S. participation in the TPP could provide it with the critical mass necessary to expand to other countries. By doing so, the TPP countries may be able to shape the regional economic architecture to the comprehensive standards of the TPP and of U.S. FTAs. Conversely, there is concern that, should the United States find itself outside the dominant regional economic architecture of Asia, trade could be diverted away from the United States. Economic linkages can also reinforce strategic relationships. If U.S. trade ties were diminished as a result of being excluded, then U.S. strategic interests and leverage could also suffer.

²⁰ House Committee on Ways and Means, “Lawmakers on Announcement of US Engagement on Trans Pacific Partnership Free Trade Agreement,” November 16, 2009.

²¹ Letter from the House Trade Working Group to USTR Kirk, January 20, 2010, available at http://www.michaud.house.gov/index.php?option=com_content&task=view&id=908&Itemid=76.

²² Letter to USTR Kirk, March 11, 2010, http://feingold.senate.gov/pdf/ltr_031110_tpp.pdf.

²³ Ways and Means Republicans press release, October 6, 2010, <http://republicans.waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=210920>

Some view the TPP as a useful initiative that, when pursued in combination with other diplomatic initiatives, could do much to improve not only trans-Pacific trade relations but also help positively affect change in the perceptions of Asian states of the U.S. commitment to Asia. Secretary of State Hillary Clinton's presence in and attention to the region, the U.S. decision to sign the Treaty of Amity and Cooperation, and President Obama's announcement of U.S. interest to engage on the TPP and other multilateral groupings in Asia have all helped to positively reshape regional perceptions of the United States' posture in the region. During his speech in Tokyo in November 2009 President Obama highlighted his Asia-Pacific ties through his personal experience in Hawaii and Indonesia and stated "the Pacific rim has helped shape my view of the world." In that speech he also reaffirmed the U.S. commitment "to strengthen old alliances and build new partnerships with the nations of this region."²⁴

Context with Other Regional Architectures²⁵

There are several overlapping and potentially competing regional architectures in Asia having both economic and strategic aspects. They can be grouped into two categories, the first being those that are Asia-centric in approach and would exclude the United States, and the second being those that are trans-Pacific in nature and would include the United States and other Western Hemispheric nations. U.S. policy appears to be aimed at gaining U.S. participation in what have been more Asia-centric groups to enhance U.S. regional engagement.

The first more Asia-centric group includes the Association of Southeast Asian Nations (ASEAN) + 3 and ASEAN + 6 groups. The ASEAN + 3 group includes the members of ASEAN (Brunei, Burma, Cambodia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) plus China, Japan, and South Korea. The ASEAN + 6 group is also known as the East Asia Summit (EAS). It includes ASEAN members, China, Japan, and South Korea as well as India, Australia, and New Zealand. It is thought that key states in ASEAN wanted to balance the influence of China in the EAS by including Australia, India, and New Zealand. The United States is currently seeking membership in the EAS, and Secretary of State Clinton will be traveling to Hanoi to attend the October 2010 meeting as an observer. President Obama has also signaled his intention to travel to the EAS meeting in Jakarta in 2011.

The 21-member Asia-Pacific Economic Cooperation (APEC) group is the most comprehensive trans-Pacific group that includes the United States. A Free Trade Area of the Asia Pacific (FTAAP), proposed at the 2006 APEC meeting in Hanoi, would include all APEC members and is being considered by APEC as a whole. Such an approach has proven to be difficult to negotiate with all members. Many hope that the TPP will add a bottom-up impetus to promote trade liberalization among APEC states and potentially succeed where the FTAAP thus far has not.²⁶

²⁴ Remarks of President Obama at Suntory Hall, Tokyo, Japan, November 14, 2009.

²⁵ For more detailed analysis, see CRS Report RL33653, *East Asian Regional Architecture: New Economic and Security Arrangements and U.S. Policy*, by Dick K. Nanto.

²⁶ P. Parameswaran, "US to Join Budding Asia-Pacific Free Trade Agreement," *Agence France Presse*, September 22, 2008.

Since the end of World War II, the United States traditionally has played a central role in developing or leading Asian strategic and economic architectures. While the United States has tried in the past to develop multilateral strategic groups, such as the Southeast Asia Treaty Organization (SEATO), it has had more success in the strategic arena in Asia through its key bilateral treaty relationships with Australia, Japan, the Philippines, South Korea, and Thailand. Collectively, this post-World War II system of bilateral alliances became known as the San Francisco system. The United States has more recently engaged in trilateral security discussions with Australia and Japan and has made a key strategic opening to India. Other regional states, such as Singapore, also enjoy close bilateral strategic and defense relations with the United States, though they are not defined by treaty.²⁷ New multilateral initiatives by the United States are likely to be pursued in tandem with continued emphasis on America's bilateral strategic ties to the region.

A Comprehensive Trade Agreement

The United States generally has sought to negotiate comprehensive free trade agreements that liberalize trade in all sectors of the economies of partner countries. In its FTA policies, the United States seeks to follow the provisions of the WTO General Agreements on Tariffs and Trade, which has stipulated that free trade agreements cover "substantially all trade" among the participating countries (Article XXIV(8)(b)). The TPP among the P-4 countries likewise has endeavored to achieve a similar level of comprehensiveness, which may be one reason that the TPP has attracted attention from the United States.

The TPP among the P-4 countries provides for the complete elimination of tariff lines among Chile, New Zealand, and Singapore, and a 99% liberalization with Brunei, all to be phased out over time. The services schedule follows a negative-list approach, meaning that a category of services trade is covered in the agreement unless specifically excluded. The services schedules reportedly represent a significant expansion on the parties' services commitments to the WTO.²⁸ The agreement contains chapters addressing potential non-tariff barriers such as customs valuation procedures, sanitary and phyto-sanitary standards (SPS), and technical barriers to trade (TBT). The agreement also contains chapters on competition policy, intellectual property rights, government procurement policy, temporary movement of business persons, and provisions governing the settlement of disputes. The agreement sets out memoranda of understanding (MOU) among the parties on labor and environmental cooperation. Chapters on financial services and investments are currently being negotiated.

²⁷ For more on the evolving strategic architectures of Asia see CRS Report RL34312, *Emerging Trends in the Security Architecture in Asia: Bilateral and Multilateral Ties Among the United States, Japan, Australia, and India*, by Emma Chanlett-Avery and Bruce Vaughn, *Emerging Trends in the Security Architecture in Asia: Bilateral and Multilateral Ties Among the United States, Japan, Australia, and India*, by Emma Chanlett-Avery and Bruce Vaughn.

²⁸ New Zealand Ministry of Foreign Affairs and Trade "Trans-Pacific Strategic Economic Partnership Agreement: Key Outcomes- June 2005," <http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Relationships-and-Agreements/Trans-Pacific/0-key-outcomes.php>.

Negotiating the “architecture” of the new TPP agreement became the focus of the first two negotiating sessions. Not only is there an existing agreement among the P-4 countries, but FTAs also exist among many of the parties (both original and acceded) including the United States. This discussion is especially relevant when it comes to the integrity of the existing market access schedules negotiated in the pre-existing FTAs. These schedules often provide carve-outs, phased-in tariff reductions, or rules of origin for certain sensitive sectors. For the United States, the status quo would allow existing schedules negotiated for sensitive sectors to be maintained in each agreement, as well as the commercial decisions made in response to them. Market access schedules would need only be negotiated with TPP partners without FTAs with the United States: Brunei, New Zealand, and Vietnam. The United States has favored this approach, while Australia, New Zealand, and Singapore reportedly have favored negotiating a common market access schedule.²⁹ Adherents to this view assert that the advantage of negotiating a regional agreement such as TPP would be to reduce or eliminate the “spaghetti bowl” effect of different commitments and rules of origin among the existing agreements. Also, some countries may favor reopening the schedules to get a better deal for their exporters.

This situation was resolved in a preliminary fashion prior to the third round of negotiations in Brunei. Rather than mandating whether countries make offers on a bilateral basis, or to the TPP membership as a whole, they will be allowed, at present, to do either. According to a USTR spokeswoman, while the United States would be making bilateral market access offers, countries would be free to make common offers to all TPP participants.³⁰ Although this “hybrid” approach allows the talks to proceed without getting bogged down in modalities discussion, how this issue will be resolved remains unclear.

Negotiators from the United States and other parties have expressed interest in including new areas for discussion, in order to live up to TPP’s billing as a “21st century trade agreement.” In some cases, these discussions include topics for which APEC has drawn up non-binding principles, agreed to by the parties, but implemented at the discretion of its members. An example of these negotiations is principles on cross-border trade in services, in which APEC members reached agreement in November 2009. This agreement prohibits APEC countries from mandating a local presence requirement for companies engaged in cross-border provision of services.³¹ Harmonization of rules of origin, supply chain management issues, competition policy, trade facilitation, and technical barriers to trade (such as product safety standards) have also been mentioned as possible areas for negotiation. Some other so-called “horizontal” issues include:

- **Regulatory Coherence.** This concept is an attempt to eliminate non-tariff barriers and to make regulatory systems more compatible and transparent. According to a U.S. negotiator, the goal is not to interfere with the right of governments to regulate, but to expand internal regulatory coherence within each country and cooperation among TPP partner countries on existing and new regulatory issues. It has been suggested that one way to achieve internal coherence is for each TPP participant to create a regulatory coordinating body

²⁹ TPP Countries Examining New Compromise Idea for Market Access Talks,” *Inside U.S. Trade*, August 6, 2010.

³⁰ “TPP Countries Reach Initial Deal on How to Handle Market Access Talks,” *Inside U.S. Trade*, September 23, 2010.

³¹ “APEC Endorses Services Principles, Rules of Origin Initiative,” *Inside U.S. Trade*, November 27, 2009

such as the U.S. Office of Information and Regulatory Affairs in the Office of Management and Budget.³²

- **Competitiveness and Connectivity.** This category encompasses issues such as supply chain management, trade facilitation, and border procedures. In a recent “Doing Business” survey, the World Bank measured the number of procedures, documents, time, and costs to import and export a standard container of goods. Among TPP countries, the United States ranked second after Singapore (ranked first), but only at 18th overall. Rankings of other TPP countries (New Zealand (26th), Australia (27th), Malaysia (35th), Chile (56th), Vietnam (74th), and Peru (91st)) indicate the potential for improvement among TPP participants in this area.³³
- **Small and Medium-sized Enterprises (SME).** Recognizing that SMEs form the majority of business and job creation in each national economy, TPP partners are examining ways for SMEs to more fully participate in trade and to access international markets.³⁴

Another issue to be settled in the negotiations is the process by which other nations can accede to the negotiations or to the agreement. To some proponents of the proposed agreement, the prospect that TPP may attract other members and become the vehicle for trans-Pacific economic integration has become a real value-added to the negotiations. This raises questions as to how other countries may join the negotiations or any eventual agreement. It has been suggested that countries may accede to the talks prior to substantive decisions being taken, after some benchmarks are agreed to, or after a final agreement has been reached. Each of these options provides challenges and opportunities for the talks. The negotiations may benefit from the input of more parties initially, yet such inclusion may make the talks unwieldy. Agreement on key concepts or on a finalized pact may provide clarity to what acceding members are joining, but may include items unacceptable to parties for which inclusion may be sought for commercial or architectural reasons. The key question may be the willingness of potential participants to put all issues on the table—and be seen by existing TPP participants as having the political backing to do so—without being seen as pre-negotiating or acquiescing to preconditions. Several countries, most notably Japan and Canada, are now engaged in this exercise. However, according to the New Zealand trade negotiator, the window to join the talks in the first tranche is becoming “much, much tighter” as the talks progress from discussing concepts to formulating texts and market access commitments.³⁵

³² Assistant USTR Barbara Weisel, Presentation to the Peterson Institute for International Economics, October 25, 2010; “U.S. May Ask TPP Countries to Establish Regulatory Coordinating Bodies,” *Inside U.S. Trade*, October 8, 2010.

³³ The World Bank Group, *Doing Business 2011: Making a Difference for Entrepreneurs*, national rankings at: <http://www.doingbusiness.org/rankings>.

³⁴ Weisel, fn 32.

³⁵ “New Zealand TPP Negotiator Sees Time Running Out for Adding New TPP Members,” *World Trade Online*, October 27, 2010.

Table I. U.S. Goods Trade with TPP Countries, 2009
(million \$)

Country	Rank	Imports	Exports	Total	Balance
Singapore	15	15,586.9	19,923.6	35,511.5	4,335.8
Malaysia	18	23,252.0	8,911.8	32,163.8	(14,340.1)
Australia	21	7,997.8	18,243.7	26,241.5	10,245.9
Vietnam	30	12,366.8	2,966.6	15,333.4	(9,400.2)
Chile	31	6,047.2	8,693.5	14,740.7	2,646.3
Peru	42	4,234.6	4,355.8	8,590.4	121.2
New Zealand	55	2,535.8	2,048.8	4,584.6	(487.0)
Brunei	152	41.6	96.8	138.4	55.2
Total-TPP	5	72,063.7	65,240.6	137,304.3	(6,823.1)
Pacific Rim		564,706.6	240,561.4	805,268.0	(342,145.2)
World		1,549,163.5	936,745.0	2,485,908.5	(612,418.5)

Source: U.S. International Trade Commission

Notes: Rank based on total trade (imports+exports); imports for consumption, U.S. domestic exports.

U.S. Trade with Current Trans-Pacific Partner Countries

Table 1 shows U.S. trade in goods with the TPP-8 partner countries. In 2009, the United States ran a merchandise trade deficit with New Zealand, Brunei, Vietnam, and Malaysia and ran surpluses with Australia, Chile, Peru, and Singapore, yielding an overall trade surplus with the potential TPP bloc of \$6.8 billion. Taken as a bloc, trade with the TPP-9 countries represents the fifth-largest trading partner of the United States, just behind Japan and ahead of Germany. However, trade with the TPP represents a small percentage of U.S. total trade with the Pacific Rim (17%) and the world (6%).

Concluding a TPP agreement would involve negotiating FTAs with New Zealand, Brunei, Malaysia, and Vietnam. This likely would entail tough talks on sensitive U.S. agriculture sectors such as beef, lamb, and dairy products with New Zealand. U.S. goods trade with New Zealand is relatively small. New Zealand was the 55th-largest trading partner of the United States in 2009 with two-way trade of \$4.6 billion. U.S. imports of \$2.5 billion were led by meat, dairy products, wine, medical equipment, fish, sawmill products, and chemicals. U.S. exports of \$2.0 billion consisted foremost of aircraft and parts; engines, turbines, and power transmission equipment; navigational, measuring, electromedical, and control instruments; agricultural and construction equipment, and chemicals. (See **Appendix**, below.) The United States also conducts extensive services trade with New Zealand, including exports of \$1.5 billion and imports of \$1.6 billion in 2009. Brunei is a relatively minor trading partner of the United States (152nd-largest) with total trade of \$138.4 million in 2009 (\$96.8 million in exports, \$41.6 million in imports).

Malaysia was the 18th-largest trading partner of the United States with two-way trade totaling \$32.2 billion in 2009—\$8.9 billion in exports and \$23.3 billion in imports. Major U.S. exports to

Malaysia include electronic circuitry, computer parts and equipment, scientific equipment, aircraft, and machinery. U.S. imports from Malaysia include computers and parts, electrical machinery, telecommunications equipment, furniture, and rubber products. The United States also conducted \$2.7 billion in services trade with Malaysia in 2009 with a \$648 million surplus.

Vietnam was the 30th-largest trading partner of the United States in 2009 with two-way trade totaling \$15.3 billion in 2009—\$3.0 billion in exports and \$12.4 billion in imports. Proportionally, the United States has the largest trade deficit among the TPP participants with Vietnam. U.S. exports to Vietnam include motor vehicles, construction equipment and parts, tractors, scrap iron and steel, and computing equipment. Major U.S. imports from Vietnam include clothing and apparel, furniture, footwear, telephone handsets, and digital video cameras.

Table 2. U.S. Private Services Trade with TPP Members, 2009
(\$million)

Country	Exports	Imports	Total	Balance
Chile	2,154	1,150	3,304	1,004
New Zealand	1,478	1,627	3,105	-149
Singapore	9,293	3,834	13,127	5,459
Australia	12,227	5,676	17,903	6,551
Malaysia	1,726	1,068	2,749	658
Total	26,878	13,355	40,188	13,523

Source: Bureau of Economic Analysis, Survey of Current Business, October 2010.

Notes: BEA does not collect services trade data from every partner country.

The United States also maintains extensive services trade with TPP countries. Generally, the United States has maintained consistent surpluses with these countries except for New Zealand. In the case of Australia, with which the United States has an FTA, total services trade grew at an annual rate of 11.75% in the four years following the FTA's coming into effect, and services exports grew even faster at 14.25% per annum. Chile and Singapore have also experienced an upward, if more measured, trajectory in two-way services trade.

Potential Controversies

In negotiating an agreement with the TPP countries, several potential controversies may arise. Some are country specific, such as agriculture issues with New Zealand. Other issues may involve New Zealand, Brunei, Malaysia, and Vietnam, or issues related to the implementation of FTAs that the United States currently has with Chile, Singapore, Australia, and Peru.

Agricultural Products

Dairy

The National Milk Producer's Federation (NMPF) has sought an exclusion for the dairy industry in any potential FTA negotiations with New Zealand. At issue is the New Zealand dairy cooperative Fonterra, which NMPF claims acts as a monopoly and controls 90% of milk production in New Zealand. The concern is that if Fonterra acts as a monopoly it can exert pricing power through cross-subsidization and provide marketing and other subsidized services. New Zealand officials contend that Fonterra has no monopoly powers and that producers are free to sell their product to whom they wish.³⁶ According to the most recent WTO Trade Policy Review, Fonterra no longer holds a statutory monopoly, but the company does hold exclusive licenses to export to some markets for periods up until 2010. Thereafter, the Ministry of Agriculture and Forestry will allocate export licenses, based on certain eligibility criteria.³⁷ Dairy products were included in the U.S.-Australian FTA but were subject to an 18-year phase-out period. Then-New Zealand Ambassador Roy Ferguson stated before the U.S. International Trade Commission on March 2, 2010, that further import penetration of dairy products into the United States would be limited by the amount of additional pastureland in the country. He also argued that the U.S. dairy industry could stand to gain through expanded market access to the growing Asia-Pacific market that the TPP could provide should it attract additional members.³⁸

Beef

U.S. beef cattle producers have also expressed concern over an FTA with New Zealand. Currently, New Zealand is allocated a tariff rate quota (TRQ) of 4.4 cents per kilogram inside a 213,402-ton quota for imported beef and 26.4 cents outside the TRQ. Some U.S. cattle producers are concerned that the TRQ on imported beef will be removed as a result of the FTA negotiations. The U.S. Cattleman's Association has favored the imposition of a quantity-based safeguard during a phase-out period and a tariff snapback to MFN rates if imports surge once tariffs are eliminated.³⁹

Other Issues

Several other areas may prove to be contentious in negotiations with TPP member countries. These issues have proved to be sticking points in past U.S. FTA negotiations.

³⁶ Discussions with New Zealand embassy officials, November 2008.

³⁷ World Trade Organization, Trade Policy Report: New Zealand, Report by the Secretariat (WT/TPR/S/216), May 6, 2009, p. 75.

³⁸ Amb. Roy Ferguson, "Trans-Pacific Partnership: New Zealand Submission to the US International Trade Commission," March 2, 2010.

³⁹ "USTR-Announced New Zealand FTA Gets Cool Agriculture Reaction," *Inside U.S. Trade*, September 26, 2008.

Intellectual Property Rights

The United States has sought increased intellectual property rights (IPR) protection in its FTAs. Two broad IPR negotiating objectives were elucidated in the last U.S. trade promotion authority (P.L. 107-210) in effect between 2002 and 2007: (1) to apply the existing IPR protection to digital media and (2) to negotiate trade agreements in terms of IPR that “reflect a standard of protection similar to that found in U.S. law.” This phrase opened the door to the negotiation of provisions that go beyond the level of protection provided in the WTO Trade Related Aspects of Intellectual Property (TRIPS) agreement. For example, the United States has sought to have its partner countries sign onto the World Intellectual Property Organization’s (WIPO) Performances and Phonograms Treaty, an agreement to which New Zealand is not a party. USTR’s 2010 U.S. Foreign Trade Barriers Report (FTB) noted that New Zealand is an active participant in efforts to strengthen international IPR enforcement by participating in the negotiations on a multilateral Anti-Counterfeiting Trade Agreement, and that it had passed a new copyright protection act in April 2008.⁴⁰ Conversely, the FTB criticized Brunei for its alleged high piracy rates and the weak governmental track record on enforcement.⁴¹ The U.S. Special 301 report for 2009 put Chile in the “priority watch category,” noting that “Chile’s IPR performance continues to fall well below expectations for a U.S. FTA partner.” In addition, Peru, Vietnam, and Malaysia were placed on the “watch list.”⁴²

Pharmaceuticals

New Zealand administers a national formulary for medicines that the government purchases for its national health service. The United States has expressed concern that the practices and procedures of the Pharmaceutical Management Agency (Pharmac), which maintains the formulary, put “innovative pharmaceutical products,” often made in the United States, at a disadvantage to older, generic products.⁴³ In negotiations with Australia over a similar system, the United States and Australia agreed to a series of consultation and transparency mechanisms, designed to afford U.S. manufacturers an opportunity to make their case for inclusion in the formulary.

Government Procurement

The United States is a member of the plurilateral WTO Government Procurement Agreement (GPA) and has sought the inclusion of government procurement provisions in its FTAs. Among TPP partner countries, only Singapore is also a member of the GPA. While New Zealand is not a member of the GPA, their officials assert that the country maintains a more liberalized

⁴⁰ U.S. Trade Representative, *2010 National Trade Estimate Report on Foreign Trade Barriers*, Brunei, p. 47, available at http://www.ustr.gov/uploads/reports/2010/NTE/NTE_COMPLETE_WITH_APPENDnonameack.pdf (hereinafter, *FTB report*), New Zealand, p. 261.

⁴¹ *FTB Report*, Brunei, p. 42.

⁴² U.S. Trade Representative, *2009 Special 301 Report*, [[http://www.ustr.gov/sites/default/files/Full%20Version%20of%20the%202009%20SPECIAL%20301%20REPORT.p](http://www.ustr.gov/sites/default/files/Full%20Version%20of%20the%202009%20SPECIAL%20301%20REPORT.pdf)df] Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning IPR protection, enforcement, or market access for persons relying on intellectual property.

⁴³ *FTB*, New Zealand, p. 263.

procurement regime than is specified by the GPA. New Zealand maintains certain government procurement preferences for its Maori population pursuant to the Treaty of Waitangi. In previous FTA negotiations with Malaysia, the United States had sought concessions on government procurement preferences designed to assist the Malay population in Malaysia. U.S. FTAs with Australia, Peru, Chile, and Singapore include sections on government procurement, which provide opportunities for firms of each nation to bid on certain federal, state, and municipal contracts over a set monetary threshold.

Environment and Labor

Some Members of Congress have sought the expansion of labor and environmental provisions in U.S. FTAs. The existing TPP contains a labor memorandum of understanding (MOU) and an environmental cooperation agreement between the parties. These agreements pledge the parties to work together to promote sound labor and environmental practices, while respecting the right of parties to set, administer, and enforce their own labor and environmental laws. It commits the parties not to set or use labor or environmental laws or practices either for trade protectionist purposes nor to weaken such laws or practices to encourage trade and investment. This language is generally consistent with the language that the United States negotiated in its FTAs with Chile, Singapore, and Australia. Subsequently in the 110th Congress, the Administration and congressional leaders agreed to strengthen certain provisions of the environmental and labor provisions for certain outstanding trade agreements. This agreement was reflected in the U.S.-Peru FTA which entered into force on February 1, 2009. In August 2010, USTR officials announced that all TPP participants, despite differences in levels of development, would be required to meet the same labor and environmental conditions.⁴⁴

Trade Promotion Authority

In order for any TPP agreement negotiated to come into force, legislation implementing the agreement must be passed by both houses of Congress. Most of the previous trade agreements have received congressional consideration under “fast-track” procedures known as trade promotion authority (TPA), which last expired in 2007. TPA allows the President to negotiate reciprocal trade agreements that are to receive expedited congressional consideration (i.e., limited debate and committee consideration, no amendments, and an up or down vote) as long as the President adheres to specific deadlines and consultation requirements. TPA allows Congress to exercise its constitutional authority over trade, while giving the President added leverage to exercise his authority to negotiate trade agreements by effectively assuring U.S. trade partners that final agreements are given swift and unamended consideration. Some observers have expressed concern that future trade agreements, including FTAs under the TPP framework, will be difficult to negotiate in the absence of TPA.

⁴⁴ “Labor, Environmental Standards to be Same Across all Eight TPP Countries,” *International Trade Reporter*, August 19, 2010.

Appendix. U.S. Merchandise Trade with New Zealand, 2009

Appendix. U.S. Merchandise Trade with New Zealand 2009 North American Industrial Classification System (NAICS)-4 Product Description

U.S. Exports	Amount (million \$)	U.S. Imports	Amount (million\$)
Special Classification, NESOI	228	Meat Products	728
Aerospace Products/Parts	212	Dairy Products/Cheese	453
Engines/Turbines/Power Transmission Eqpt.	109	Beverages/Wines	167
Navigational/Measuring/ Electromedical/Control Instruments	104	U.S. Goods Returned/ Reimported	156
Agriculture/Construction Machinery	97	Medical Equipment/ Supplies	114
Basic Chemicals	84	Sawmill/Wood Products	95
General Purpose Machinery	75	Fish/ Fresh or Frozen	93
Medical Equipment/Supplies	59	Basic Chemicals	86
Pharmaceuticals/Medicines	58	Fruits and Tree Nuts	84
Computer Equipment	55	Foods, NESOI	77
Motor Vehicles	54	General Purpose Machinery	39
Pesticides/Fertilizer/Agricultural Chemicals	47	Special Classification, NESOI	34
Soaps/Cleaning Compounds	42	Pharmaceuticals/Medicines	24
Resin/Synthetic Rubber, Fibers and Filament	40	Other Wood Products	23
Plastics	38	Agriculture/Construction Machinery	23
Other	748	Other	341
Total	2,049	Total	2,536

Source: U.S. International Trade Commission

Notes: NAICS-4 Product Description

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