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AFFAIRS

Published by the Council on Foreign Relations

July/August 2012

COMMENT

## Trading Up in Asia

Why the United States Needs the Trans-Pacific Partnership

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*The tradecjif: rallying against the Trans-Pacific*

*Partnership in Tokyo, October 2011 (Yuriko Nakao / Courtesy Reuters)*

As the Doha Round of global trade talks nears its 12th year with no end in sight, the negotiations have all but failed. Frustrated with Doha's stagnation and eager to expand trade and secure alliances, the United States has signed a series of bilateral free-trade agreements (FTAs), culminating in last year's pacts with Colombia, Panama, and South Korea. These deals have been generally favorable to the United States; the agreement with South Korea is expected to increase trade between the two countries by billions of dollars and create tens of thousands of jobs for each.

Despite these results, the bilateral approach doesn't offer much promise. The passage of last year's deals ended a five-year standoff between, on the one side, most Republicans in the House of Representatives and pro-trade advocates in the business community and, on the other, House Democrats, most unions, and U.S. car producers, which fought particularly hard against the deal with South Korea due to long-standing restrictions against U.S. car sales

there. After a difficult process of lobbying, wrangling, and compromise, the Obama administration has little stomach left to attempt another bilateral deal.

To move its trade agenda forward, the White House has instead embraced a measure between the global Doha Round and the bilateral FTAs: a plurilateral process centered on the Trans-Pacific Partnership. Currently being negotiated by Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam, the TPP will represent one of the world's most expansive trade agreements. And if Canada, Mexico, and especially Japan, all of which expressed interest in joining the negotiations last November, also sign the agreement, the TPP will add billions to the U.S. economy and solidify Washington's political, financial, and military commitment to the Pacific for decades to come. Given the potential windfall, the Obama administration believes that the TPP has a better chance of overcoming domestic opposition than would a Doha agreement or new bilateral deals.

But the TPP faces obstacles. Critics in several nations involved in the negotiations fear that the United States, to protect its businesses and innovators, is trying to use the agreement to impose its own expansive copyright and patent regulations on its trade partners. The relative secrecy surrounding the TPP talks has only deepened those anxieties. Negotiators have allowed interested stakeholders, from industry to the general public, to present information at open TPP sessions, but they have refused to release the texts of the negotiations. If the Obama administration fails to accommodate reservations about intellectual property rights and make the talks more transparent, there is a growing possibility that the TPP could collapse. The resulting failure would represent a major defeat for the Obama administration and undermine its goal of ensuring a long-term presence for the United States in the Asia-Pacific region.

## PACIFIC PROMISE

As currently proposed, the TPP would go well beyond categories traditionally included in trade agreements. To begin with, over the next decade, it would gradually remove all tariffs on trade between member states. Following the model of the FTA between the United States and South Korea, it would affect almost all forms of economic interaction among its members, covering policies on investment and government procurement, labor and environmental standards, agriculture, intellectual property, and such new sectors as state-owned and small and medium-sized enterprises, businesses with anywhere between 50 and 500 employees. The United States and its partners hope that the TPP becomes the linchpin of free trade in the Asia-Pacific region.

But the TPP cannot achieve that potential without Japan. The country's GDP is more than double that of all the other TPP nations combined, save for the United States. Including Japan would mean that the agreement covered 40 percent of global GDP and add \$60 billion to the U.S. export market. That is why the Obama administration and the U.S. export sector declared its support for Japan's addition to the TPP when Tokyo indicated its interest in joining. This past December, more than 60 American food and agricultural organizations sent a joint statement to Ron Kirk, the U.S. trade representative, and Tom Vilsack, the U.S. secretary of agriculture, encouraging them "to smooth the way for Japan's full participation." A week later, the Business Roundtable, an association of CEOs, and the U.S. Business Coalition for TPP, a collection of companies in favor of the free-trade agreement, sent similar letters to the U.S. trade representative. In March, Wendy Cutler, an assistant U.S. trade representative, told an audience in Tokyo that "the prospect of Japan joining the TPP . . . is important; it's historic. And frankly it's exciting."

Enticed by that possibility, the Obama administration has made the TPP the keystone of its trade policy, and it is

doing all that it can to shape the agreement in the United States' favor. For example, it has emphasized encouraging and protecting the interests of small and medium-sized enterprises. Such businesses generally have little experience in dealing with imports or exports, but Washington hopes to enhance their role in the TPP because they compose the bulk of U.S. employment and so by aiding them, it may be able to build domestic support for trade. Americans have long been indifferent to trade, believing that it benefits mainly foreigners, costs them jobs, and contributes to the U.S. trade deficit, which is seen as inherently negative despite the fact that it has long coincided with American trading and political power.

## PROPERTY WRONGS

Even as Washington hopes that its efforts to shape the TPP will sooth the concerns of U.S. industries and unions, it has already rankled public interest groups and the governments of the other countries negotiating the agreement -- particularly when it comes to intellectual property.

In February 2011, a draft text regarding intellectual property from the TPP negotiations was leaked online. A number of U.S. and foreign groups, such as Intellectual Property Watch, Public Knowledge, TPP Watch, and Anonymous harshly criticized several measures outlined in the document. In particular, they condemned proposals for criminal enforcement of copyright and patent law that go beyond existing treaties between the various negotiating countries. They also asserted that the TPP would require Internet service providers to identify users and that the United States is unreasonably seeking to impose its own extensive copyright protections on the agreement. U.S. law stipulates that the vast majority of copyrights should end after 70 years, but critics claim, incorrectly, that the Obama administration has called for the TPP to include a 95-year minimum copyright term on some works. The legal scholars Sean Flynn and Jimmy Koo captured critics' fears when they wrote in 2011 that the TPP would create "the most extreme, anti-consumer and anti-development international instrument on intellectual property to date."

The administration has supported these proposals not to harm consumers but to protect American innovators. Intellectual property is already a major source of value for the United States; in 2010, for example, 40 percent of worldwide payments made to intellectual property holders -- nearly \$100 billion -- went to Americans. According to the U.S. Commerce Department, those sums matched the profits earned from the export of aircraft, grain, and business services, three sectors that lead the U.S. trade surplus. And U.S. intellectual property will only become more important in the coming years, as several U.S.-based technological innovations, such as next-generation manufacturing techniques and cutting-edge wireless communications, drive the country's trade. The creators of those technologies will need as much shelter under the TPP as those who currently hold copyrights and patents under U.S. law.

The United States is hardly the only nation affiliated with the TPP that has an interest in securing copyright and patent protections for its citizens. In 2008, for example, Japan led the world in patent applications. And Singapore, with its multibillion-dollar biotechnology investments, also needs to protect its homegrown efforts. In rightly defending the intellectual property rights of American innovators, the United States has also led the way for these other nations. But it is clear that some of those countries do not believe that the United States has their best interests in mind.

## FREE TALKS

Despite the broad interest in strong intellectual property protections among some countries negotiating the TPP, some nations continue to charge that the United States is making unreasonable demands. At the 11th TPP negotiating

session, in Australia this past March, for example, the Australian press reported that every TPP negotiating member had rebuffed U.S. proposals regarding intellectual property rights. And in mid-April, several negotiators from Chile put the future of the agreement in doubt when they questioned “whether joining the TPP would be worth its costs if it included additional demands on intellectual property.”

Meanwhile, during the same meeting in Australia in March, several organizations condemned the TPP for its potential impact on the availability of cheap drugs. Doctors Without Borders, for example, accused the U.S. government of inserting provisions into the TPP that would interfere with the low-cost delivery of malaria and HIV/AIDS medicines to developing nations. During a previous round of TPP negotiations, the group claimed that the agreement would “extend monopoly protection for old drugs by simply making minor modifications to existing formulas,” thereby preventing the introduction of cheaper generic drugs.

The U.S. government has not addressed every accusation leveled against it in the TPP process, but in late February, Demetrios Marantis, the deputy U.S. trade representative, said that his office “strongly disagree[s]” with Doctors Without Borders. He pointed out that the Office of the U.S. Trade Representative had six months earlier established a nine-point TPP program, “Trade Enhancing Access to Medicines,” to ensure, in his words, that “generic drugs can get into the market as quickly as possible.”

The United States has thus at least begun to address the anxieties of TPP skeptics. But a bigger problem remains. In the age of the Internet, rumors about provisions within the agreement can quickly spark worldwide resistance. More transparency and better information about the negotiating process could help counter such rumors. And although the United States and its partners have been receptive to presentations from interested individuals and groups, they have not fully opened the process to the public, fueling legitimate concerns about the ultimate shape of the agreement. In January, for example, Gary Horlick, a prominent trade lawyer and former U.S. trade official, described the TPP process as “the least transparent trade negotiation I have ever seen.” Although Kirk, the U.S. trade representative, has called the negotiations “the most open, transparent process ever,” his team has presented very little of the U.S. position to the public or even to interested parties not officially involved in TPP discussions.

The issue came to a head this past February, when 23 U.S. organizations representing the libraries of virtually every American research institution and university urged the Obama administration to “mandate public access” to the negotiation draft texts. They argued that the provisions of the TPP “will touch every American family” and that “the enforceability and permanence of such binding rules . . . necessitate maximal transparency.” Days later, Senator Ron Wyden (D-Ore.) raised the request in a tense exchange in a hearing with Kirk. Responding to the statement, Kirk said that the Obama administration has “moved to disclose more information sooner than any previous administration.”

Unsatisfied with Kirk’s response, Wyden introduced legislation that would require the disclosure of any TPP negotiating text “not later than 24 hours after the document is shared with other parties.” Wyden’s proposal failed to gain traction, but the clamor for more openness in the TPP talks remains, both in the United States and abroad.

## A NEW KIND OF DEAL

If the TPP negotiations bear fruit, the United States will become far stronger, economically and politically, over the next generation. A deal that included Japan would essentially result in a free-trade agreement between Washington and Tokyo, representing the long-sought “third opening” of Japan and the affirmation of U.S. power in the Pacific region. More broadly, the United States hopes that the TPP will cement a system of open, interconnected trade based on

mutually-agreed-on rules.

That is why the U.S. government hopes to complete the broad outlines of a final deal by the end of the year. But first it must win over domestic opposition to the TPP, especially among the country's automotive, insurance, and agricultural sectors. It also needs to accommodate, wherever possible, the concerns of critics at home and abroad about its intellectual property demands. And it must shed more light on the negotiating process. If the Obama administration fails to take these steps, then it may miss an opportunity to pave the way for a new kind of trade agreement and to reaffirm its economic and political stake in the Pacific.

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