



THE TRANS-PACIFIC PARTNERSHIP (TPP): An American Perspective on TPP

Presented to the Japan Fair Trade Center

Warren H. Maruyama, Partner, Hogan Lovells US LLP and former General Counsel, Office of the U.S. Trade Representative

Jonathan T. Stoel, Partner, International Trade & Investment Group, Hogan Lovells US LLP

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What Is TPP?



- Regional Free Trade Agreement
 - Current Participants: Brunei, Chile, Singapore, New Zealand, U.S., Australia, Peru, Vietnam, and Malaysia
 - Interested in Joining: Japan, Mexico, Canada, Taiwan, Philippines
- Key TPP Developments
 - APEC Bogor Declaration - 1998
 - TPP Talks launched at 2002 APEC Leaders Meeting as P-3
 - P-4 enters into force between Brunei, Chile, Singapore, NZ (2006)
 - U.S. joins TPP negotiations (Sept. 2008)
 - President Obama reaffirms U.S. participation at Yokohama APEC Summit (Nov. 2009)
 - USTR Kirk notifies Congress (Dec. 2009)
 - PM Noda announces Japan will begin consultations on participation (Nov. 2011)

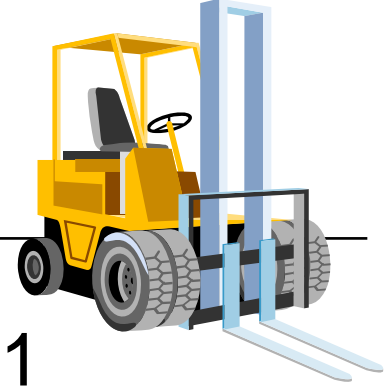


U.S. Objectives for TPP



- Achieve High-Standard, 21st Century Regional FTA
 - Update Standard U.S. FTA Disciplines, e.g. supply chains, regulatory coherence, state-owned enterprises
- Seize Opportunity of Live Major Trade Negotiation
 - Not Doha = High Standard + Reasonable Time Frame + Limited Participation
 - Expand U.S. Exports under President Obama’s NEI
- Strategic Counter to Chinese Influence in Asia Pacific
- Establish U.S.-Based “Template” for Future Expansion of Asia-Pacific Free Trade

Goods Market Access



- Initial Market Access Offers – January 2011
- Requests for Improved Offers – Singapore (March 2011)
- U.S. Initial Offer – 4 Categories
 - Zero Tariff on Entry Into Force
 - 5-Year Phase-out
 - 10-Year Phase-out
 - Undefined –Import- and/or Politically-Sensitive U.S. Products, e.g., Dairy, Sugar, Light Trucks, Autos, etc.
 - No Exceptions in Initial U.S. Offer, e.g. Sugar in Australia FTA



Agriculture Market Access



- Elimination of Tariffs / “Comprehensive” Coverage
- U.S. FTAs –Transition Mechanisms for Agriculture Chapter
 - Sensitive Tariffs Phased Out Over 10-15 Year Transition Periods.
 - Tariff-Rate Quotas for Import-Sensitive Agricultural Products
 - Colombia – US TRQ on Sugar – Rises from 50,000 MT to 60,500 in Year 15 and by 750 MT each year thereafter (+ NAFTA Net Exporter Clause)
 - KORUS – Korea got 15-year transitions in TRQs on beef, pork, beans, etc., and total exclusion for rice
 - Temporary Safeguard - Product-Specific Trigger Level – Set out in Annex
 - Snaps back to applied MFN rate. Terminates at End of Calendar Year
 - Safeguard Expires When Tariff Goes to Zero, or End of Period Specified in Schedule, *i.e.* 10-15 years.
 - WTO Green Box – Minimally Trade-Distorting Subsidies Permitted
 - Product Exclusions – Highly Controversial
 - Australia FTA – Sugar and KORUS – Rice.
 - USTR has rejected proposed dairy exclusion, despite pressure from NMPF
 - Concerns over precedent for future Japan and Korea demands on rice/beef

Trade in Services

- U.S. KORUS Services Chapter – Basic Model
- P-4 – very similar services obligations to KORUS
- Core – MFN, National Treatment, Market Access, Transparency
- Scope – Both KORUS and P-4 Are Negative List
 - Some exclusions – air transport, government procurement, natural persons, immigration
 - Limited recognition of professional qualifications
 - P-4 excludes financial services, whereas KORUS and other U.S. FTAs include financial services chapter

Financial Services Chapter – Coverage

- “Negative List” Approach
- Insurance and insurance-related services
 - Direct insurance, reinsurance and retrocession, insurance intermediation, auxiliary insurance services
- Banking and other financial services, including:
 - Deposits and lending, financial leasing, payment and money transmissions, money brokering, asset management, and settlement and clearing services
- Does not cover manufacturing enterprises unless own or invest in financial institution
- Exceptions for Prudential, Monetary, Credit, and Exchange Rate Policies
- Excludes Government Retirement and Social Security Programs
- Non-Conforming Measures – Notification Process for Country-specific exemptions from certain obligations, e.g. national treatment
- Special Dispute Settlement Rules, e.g. financial expertise, prudential.

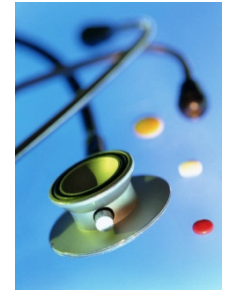
Financial Services – Safeguards and Issues

- TPP investment chapter will provide financial services institutions with several important protections, including:
 - Market Access (*e.g.*, eliminating caps on number of providers)
 - Most-favored Nation (MFN) Treatment
 - National Treatment
 - Ability to supply new financial services
 - Transparent regulations and policies governing relevant activities
- Major Negotiating Issues
 - P-4 Excludes Most Financial Services, including banking and insurance
 - P-4 - State-to-State Dispute Settlement
 - KORUS - Limited Investor-State Dispute Settlement

IPR – TRIPS-PLUS?



- Differences Over Shape of IPR Chapter
 - U.S. – TRIPS-Plus Disciplines for Copyright, Pharmaceuticals, etc.
 - NZ – Stick with P-4 / WTO TRIPS Agreement
- Key U.S. Goals for TRIPS-Plus in U.S. FTAs?
 - Pharmaceuticals – Data Protection, Patent Term Extension, Linkage
 - U.S. TPP Proposal on “Access to Medicines”
 - Copyright
 - Life of Author, Plus 70 Years
 - Special Provisions re. Dissemination of Material on Internet
 - Limits on Liability of Internet Service Providers
 - Limits on Geographical Indications
 - Conflict with Trademark, e.g. “Budweiser,” “Parmesan” Cheese
 - Preempt EU FTAs That Commit Partners to Enhanced GI Protections
 - Enhanced Enforcement Procedures, e.g. criminal penalties for commercial piracy



Investment Issues

- TPP investment chapter will provide investors with several important protections, including:
 - National Treatment
 - Most-favored Nation Treatment
 - Minimum Treatment
 - Expropriation Safeguards
- Several controversial Issues
 - Definition of investment – US has proposed broad scope
 - Investor-state Dispute Settlement – US has proposed to include comparable provisions to the KORUS FTA, unlike Australia-US FTA; Australia and possibly others are opposing (at least to start); final scope unclear
 - Inclusion of pre-establishment rights in the scope of protected investment
 - Possible incorporation of labor and environmental protections

Dispute Settlement

- 3 Types of D/S in U.S. FTAs
 - NAFTA Chapter 20 – Government-to-Government D/S
 - Traditional WTO-Type D/S
 - Investor-State – NAFTA Chapter 11
 - Gives private investor a right of action against foreign government for violations of investment chapter
 - Initial burst of cases, but waned as more far-fetched challenges have failed
 - Valuable in developing countries with weaker legal systems
 - Trade Remedies – NAFTA Chapter 19
 - US-Canada FTA – Not incorporated in recent U.S. FTAs
 - Independent Tribunals - Result binding as domestic law
 - Very effective in limiting AD/CVD - Politically controversial.

Trade Remedies Chapter

- U.S. FTAs -- Preserves Right to Impose Trade Remedies (consistent with the WTO Agreements), including:
 - Safeguards (to halt injurious surges in imports)
 - Countervailing Duties (subsidized imports that injure domestic industry)
 - Antidumping Duties (less than fair value imports that injure domestic industry)
- Similar Approach Adopted in P-4
- Possible Approaches to TPP Trade Remedies Chapter
 - Notification and Consultation Requirements for both AD and CVD proceedings (provided for in KORUS FTA)
 - Establishment of special committee to examine trade remedies issues
 - Possible multilateral dispute resolution mechanism to review safeguard and AD/CVD determinations (NAFTA Chapter 19)??
 - Comparable to NAFTA Chapter 19 Review
 - Omitted from Recent U.S. FTAs Because of Political/Congressional Opposition

“Regulatory Coherence”

- New Concept – Still Being Fleshed Out in Talks
 - Increased Focus on Regulatory Barriers
 - Increased Cooperation / Dialogue, e.g. NZ-China FTA
- More Ambitious Ideas For Coherence – Bridge Too Far?
 - Harmonization, Int’l Standards (EU-Korea Auto Annex), Equivalency (e.g. U.S.-EU Aircraft Inspections), and Mutual Recognition
 - Opposition from U.S. Regulatory Agencies, e.g. FDA
- U.S. and NZ Proposals – Principles, Objectives, Processes
 - Part I
 - Good Regulatory Practices, e.g. transparency, public comment, inter-agency coordination, cost benefit analysis / risk assessment, OIRA model
 - New Regulatory Coordinating Council
 - Part II
 - Sectoral Initiatives – Developed by TPP Industry Groups



Rules of Origin



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

- **Key to Eligibility for Duty-Free Treatment**
 - Designed to restrict eligibility for certain products
 - Can Be Extremely Complex and Very Opaque
 - Paperwork Burdens of Certifying Eligibility
- **Textiles – Major Issue in Past U.S. FTAs**
 - Yarn-Forward
 - Short Supply
 - Special Safeguards
- **Autos**
 - Special Rules of Origin
 - Duty Drawback – NAFTA v. KORUS



Other Chapters in U.S. FTAs

- Telecommunications

WORLD TRADE
ORGANIZATION



- WTO Obligations

- Reaffirm National Treatment and MFN



- Sanitary and Phyto-Sanitary Measures – Split

- U.S. and Australia – Reaffirm WTO SPS Agreement

- NZ – SPS-Plus

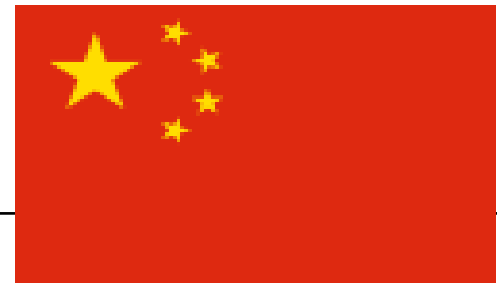
- Country-Specific Annexes – Rifle-shot Solutions

Sectoral Provisions – U.S. FTAs

- Pharmaceutical/Medical Device Pricing and Reimbursement
 - Transparency
 - Independent Review
 - Meaningful Consultation
 - Built Around U.S.-Japan Birmingham Principles (1998)
- Electronic Commerce – Duty Exemption
- Autos – NAFTA and KORUS
 - Non-Tariff Barriers – Focus on Restrictive Standards
 - Special Safeguard for Violations = Tariff Snap-back
 - Phase-out of 25% Light Truck Tariff and 2.5% Auto Tariff
 - KORUS – December 10 Renegotiation of Autos Provisions
 - Japan - AAPC
 - Delay Japan's Participation Until TPP Completed
 - Rep. Levin – Market Share Target



State-Owned Enterprises



- U.S. SOE Proposal
 - Singapore FTA
 - P-4 – Article 9.6.2
- Government Enterprise
 - Engaged in commercial transactions in competition with other private sector enterprises
 - Government owns or controls $\geq 50\%$ of voting rights, or $\geq 20\%$ of voting rights which is largest share, or has substantial influence
- SOEs must comply with Party's FTA obligations, act in accordance with commercial considerations, comply with IP and anti-corruption laws.
- Regulatory Bodies must be impartial between SOEs and non-SOEs
 - Pattern of Bias = Prima facie showing of violation of impartiality
 - Prohibition on providing financing to SOEs if causes "adverse effects"
- Exemptions for financial emergency, prudential measures
- Non-Conforming Measures – Must be negotiated at time of entry into TPP.

Labor and Environment

- Labor Rights
 - ILO Declaration
- Environment
 - Multilateral Environmental Agreements, e.g., CITES, Montreal Protocol, etc.
 - Potential New Disciplines on Illegal Logging?
 - Fisheries Subsidies, e.g. U.S. Doha Proposal
- Political Pressure
 - Labor Groups (e.g., AFL-CIO)
 - Non-government Organizations (e.g., Public Citizen, Sierra Club, etc.)
 - New Political Constraint – Republican Control of the House of Representatives; Narrower Democrat Senate Control (Potential Shift in 2012?)



Country-Specific Challenges for TPP Negotiators



- 2012 U.S. Election; Complicated U.S. Trade Politics/Unions
- U.S. – Textiles, Autos, Pharmaceutical IPR, Sugar/Dairy, Labor and Environment Issues
- NZ – Pharmac, Investor-State, SPS, NGO/Activist Opposition
- Australia – U.S. sugar exclusion, Investor-State, SPS
- Vietnam – Labor Rights, State-Owned Enterprises, Government Procurement
- Malaysia – Financial Services and Bumiputra Policy



Structural Challenges for TPP Negotiators

- Market Access Architecture – Still Unresolved?
 - Spaghetti Bowl
 - No reopening of politically-sensitive aspects of existing FTAs, e.g., sugar
 - Increases U.S. Leverage – 1 v. 1 negotiations
 - Downsides – complexity, different phase-out schedules and rules of origin for different TPP partners
 - Allows Country-Specific TRQs
 - Unified Schedule
 - Simplicity / Efficiency
 - Promotes Single TPP Market
 - Requires Politically-Controversial Re-negotiation of Phase-out and Exceptions in Existing FTAs, e.g. sugar exclusion from Australia FTA.
 - Common Schedules to Extent Possible

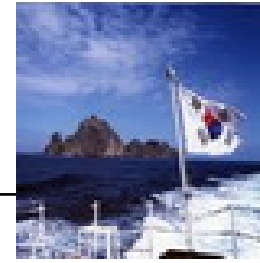




Possible TPP Timing

- Target for Agreement?
 - Original Target – APEC Meeting in Hawaii in Nov. 2011
 - New Target – Mid-2012?
- Target Date Appears Equally Unrealistic
 - Complex, Multi-Party FTA
 - Difficult and politically-sensitive issues
 - U.S. Presidential and Congressional elections
 - Need for U.S. re-think on non-tariffs barriers (NTBs) with Japan's entry.
- Timing May Slip to 2013 or Beyond

Adding New Members to TPP?



- TPP Procedures for Adding New Participants
 - Consultations – 2 rounds for Malaysia
 - Consensus
 - Past Practice
 - No Pre-Conditions
 - BL and PL Consultations to Assess Willingness to Address Existing Barriers – Readiness to live up to high TPP standards?
- Won't renegotiate existing TPP text for new entrants
- U.S. Adhering to TPA/Fast-Track Procedures
 - 90 Days Notice to Congress
 - When Does White House Transmit?
 - Need TPA/Fast-Track Authority for TPP?
 - Confidence-Building Measures?



Japanese Participation in TPP



- U.S. Views of Japan
 - Obama Administration Supports for Security and Trade Reasons.
 - Potential to Expand U.S. Exports
 - Big Upsides for U.S. Agriculture, Financial Services, Aircraft
 - Strengthen U.S.-Japan Alliance
 - Counter to China, P-3, and EU-Japan Scoping Exercise
 - Opportunity to Reinvigorate/Reform Japanese Economy
 - Impressed by PM Noda's Performance So Far
- Key U.S. Concerns?
 - Sectoral - Agriculture/Beef, Japan Post, Autos
 - GOJ requests for big, unworkable exceptions, e.g. agriculture?
 - Drag down TPP's high standards or delay agreement?
 - Do Politicians grasp high level of obligations in U.S.-style FTA?
- As TPP Text Gets Farther Along = Harder and Harder to Change

American Perspective on TPP - Conclusion

- Historic Opportunity for Japan and the U.S.
- U.S. Wants Japan in TPP If Japan Prepared to Support High-Standard 21st Century Agreement
- Consultation Process Offers Opportunity to Ensure Both Countries Share Common Vision for TPP
- Strong and Effective TPP Is In Both Countries' Interest



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