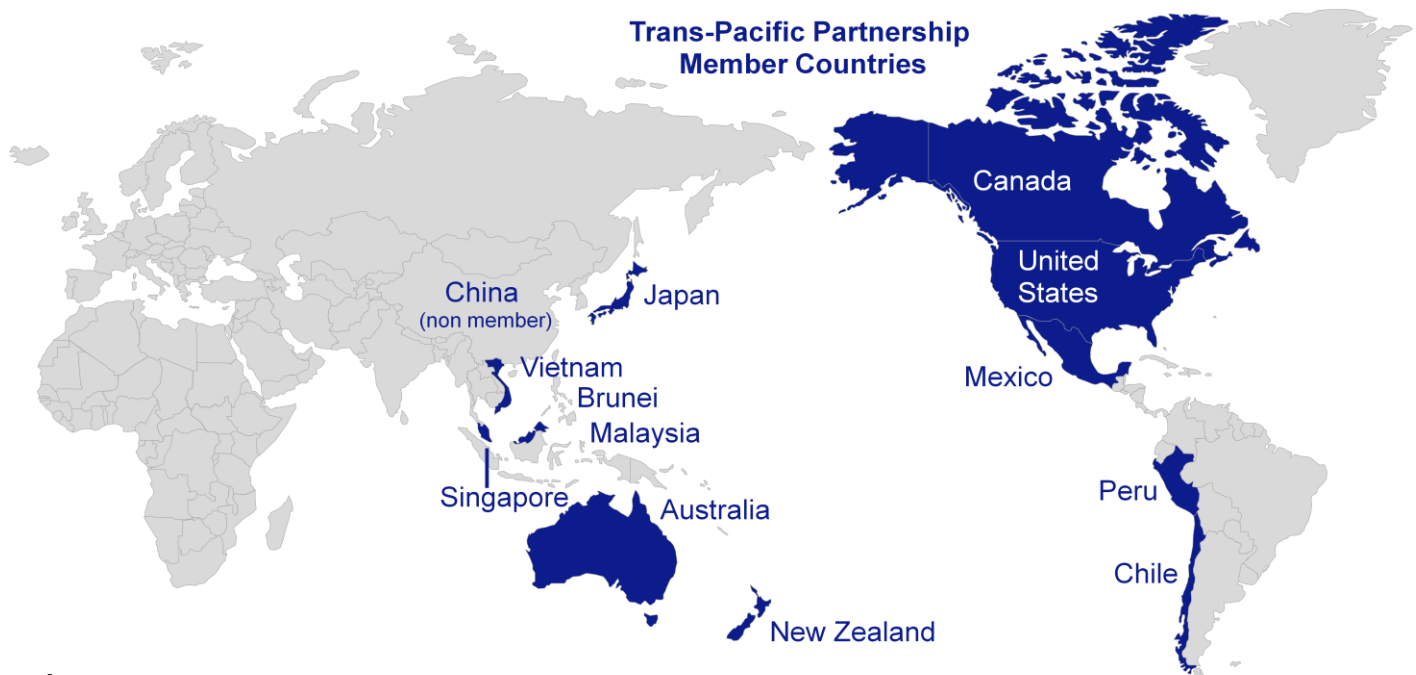


# The TPP of the Iceberg - TPP Signals New Approach to Trade Liberalisation

The conclusion of the Trans-Pacific Partnership (TPP) agreement on 4 October 2015 represents an historic moment in the history of global trade liberalisation. Whilst there has already been much commentary in the press, details of the agreement are unknown and will remain so until the text is published in about a month's time. In this note, we give our initial thoughts about the immediate and future implications of the TPP in advance of commenting on the substantive text once this is available.

The TPP has been agreed between the United States and eleven other countries<sup>1</sup> that together represent around 40% of the world's economy. Some commentators have seen it as evidence of President Obama's "pivot to Asia" and suggested that China may join (on terms largely dictated by the US). Japanese Prime Minister Shinzo Abe has said recently that the TPP would have more "significant strategic meaning if China joined".

Another potential impact of the TPP is that it may incentivise China to conclude talks on its own Regional Comprehensive Economic Partnership (RCEP). Negotiators from China and ten other ASEAN countries are presently meeting in South Korea to continue negotiations. The RCEP would link the ten ASEAN nations with Australia, China, India, Japan, New Zealand and South Korea – countries that between them make up 30% of global GDP. The TPP may also encourage Russia to accelerate its regional trade deals.



<sup>1</sup>In addition to the United States, the State-parties to the TPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

According to a briefing published by the Office of the United States Trade Representative, the TPP will *"level the playing field"* for American workers and businesses by eliminating more than 18,000 taxes that other countries impose on American exports. The note says that the TPP establishes the *"highest labor standards of any trade agreement in history, requiring all countries to meet core, enforceable labor standards as stated in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work"*. These new provisions signal the need for major changes in working practices in countries such as Malaysia and Vietnam, which will have to allow independent trade unions and a minimum wage.

## Environmental standards

The agreement is also said to include the highest environmental standards of any trade agreement in history, *"putting environmental protections at the core of the agreement and making those obligations fully enforceable"*. Countries that are judged to be failing to combat trafficking in endangered animals will face penalties. The protections afforded to workers and the environment provide an example of where negotiators have been able to link demands for free trade with consumer and campaign issues as part of a classic *"carrot and stick"* approach. Whilst critics have lambasted the TPP as a deal negotiated in secret and biased towards corporations, others are hailing the pressure brought about by civil society and through social media, which seems to have influenced the positions taken by negotiators.

## ISDS

One of the TPP's more controversial elements is a mechanism for *Investor-State Dispute Settlement (ISDS)* which will give investors the right to take governments to arbitration. The Financial Services Chapter of the TPP is also said to provide for investment arbitration. However, in a move designed to address Australian concerns, the US agreed to exclude the tobacco industry from the ISDS mechanism, which will mean that cases such as the claim launched by Philip Morris against Australia's laws requiring plain packaging of tobacco products would not be possible within the confines of the TPP.

## Obstacles

These points aside, the deal faces formidable political opposition before it comes into force. The TPP requires ratification by the legislatures of all twelve countries. In Canada, where elections are to be held on 19 October, the leader of the New Democratic Party, Tom Mulcair has said any government he leads will not be bound by the TPP, despite appearing to be enthusiastically in support earlier in the campaign. President Obama may have difficulties in Congress next year in pushing through the legislation, not least with Hillary Clinton's surprise declaration that she is not in favour and that she doesn't *"believe it's going to meet the high bar I have set"*. Some Republicans have expressed their annoyance at several last-minute concessions, with presidential contender Donald Trump describing the TPP as a *"bad deal"* and an *"attack on America's business"*. The fact remains, however, that since Congress gave the President *"fast track"* authority to conclude the TPP, Congress must either approve it or reject the package – it cannot try to amend it. With the President's authority and trade legacy on the line, the odds appear to favour ratification of the deal.

## US-EU TTIP

The conclusion of the talks however should give much-needed impetus to the US-EU trade talks concerning a *Trans-Atlantic Trade and Investment Partnership (TTIP)*. The consensus view on both sides of the Atlantic is that the two-year old talks will require a significant boost if they are to conclude before President Obama steps down at the end of 2016. Stumbling blocks remain over genetically-modified foods, and indicators of geographic origin for food products. There is also a debate over the legal protections to be afforded to European investors in the US and US investors in Europe, with a unique proposal for a *"permanent investment court"* to determine investment disputes (as opposed to *ad hoc* tribunals, which are common under Bilateral Investment Treaties). Negotiators meet this month in Florida to discuss a new proposal on tariffs, having previously agreed that tariffs will be lifted on 97% of all products. If TTIP is not agreed by the end of next year, it may be delayed considerably as a new US administration considers the details and elections in France and Germany, as well as the UK referendum on its continued membership of the European Union, which add to the political complexity of the treaty.

## Possible TIP and FTAAP

The renewed interest in trade liberalisation signalled by the TPP could also focus attention on countries surrounding the Indian Ocean, the last oceanic trade area. A *Trans-Indian Partnership (TIP)* could include countries in South-East Asia, India, Myanmar, the Arab States and Africa and would do much to advance development in these areas. Another long-term vision for the region is the *Free Trade Agreement of the Asia Pacific (FTAAP)*, which will be a combination of the TPP and the RCEP to form the largest free trade area in the world. Participating nations are expected to include India, China and the United States, which account for well over half of the global economy. All these future developments in trade liberalisation may seem far off at the moment, but they are projects whose probabilities of coming into fruition have been given a significant boost as a result of the signing of the TPP.

Further information is available from the  
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