

## ARTICLES

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# Trans-Pacific Partnership and the Multilateralization of International Investment Law

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*The multilateralization of international investment law has witnessed repeated disappointments over the past six decades. Current negotiations regarding the Investment Chapter within the Trans-Pacific Partnership Agreement may bring about a new promise for this process. It is necessary for the TPP negotiating parties to have a proper understanding of this recent history. Circumstances under which the TPP negotiations are conducted are quite different from those of the past. Thus, it can be assumed that TPP negotiations will be concluded successfully and may have profound implications on the multilateralization of international investment law. Since TPP negotiations have multilateral consequences, several new initiatives have been proposed amongst the TPP negotiating parties, which may help alleviate the 'legitimacy crisis' of the past two decades. These initiatives include a new principle of Special and Differential treatment, operative provisions on investment promotion, a Side Agreement on code of conduct of transnational corporations, and an appellate mechanism for reviewing arbitral awards.*

### Keywords

Trans-Pacific Partnership, International Investment Law, Multilateralization, P4 Agreement, BITs, MAI

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## I. Introduction

The General Agreement on Tariffs and Trade (“GATT”) was created more than 60 years ago to establish a multilateral framework to govern international trade. To date, no such multilateral framework exists *vis-a-vis* transnational investment.<sup>1</sup> As such, the prevailing approach revolves around bilateral trade agreements. Nevertheless, efforts to multilateralize investment rules continue to develop. The Trans-Pacific Partnership (“TPP”) negotiations may be one such effort that would successfully multilateralize international investment rules.<sup>2</sup>

The idea of the TPP originated from the negotiations for the Pacific Three Closer Economic Partnership (hereinafter P3 Agreement) among Chile, New Zealand and Singapore. It was convened in 2002 and joined by Brunei Darussalam in 2005. Then, these four States signed the Trans-Pacific Strategic Economic Partnership Agreement (hereinafter P4 Agreement), which came into force in 2006.<sup>3</sup> According to the provision of open accession of the P4 Agreement,<sup>4</sup> the United States (2008), Australia (2008), Peru (2008), Vietnam (2008), Malaysia (2010), Mexico (2012) and Canada (2012) have joined in negotiations towards signing a TPP Agreement.<sup>5</sup>

The P4 Agreement itself does not include an Investment Chapter. However, it provides that “negotiations on investment regime shall start no later than two years after entry into force of that Agreement.”<sup>6</sup> On June 12, 2012, the negotiated text of the Investment Chapter was released.<sup>7</sup>

This paper analyzes the effect the TPP Investment Chapter negotiations may have on the multilateralization of international investment law. It is divided into five parts including an Introduction and Conclusion. Part two will begin with some theoretical debates regarding multilateralization. Part three will trace several

<sup>1</sup> J. Morin & G. Gagné, *What Can Best Explain the Prevalence of Bilateralism in the Investment Regime?*, 36 INT’L J. POL. ECON. 53 (2007).

<sup>2</sup> R. Dattu, *A Journey from Havana to Paris: the Fifty-Year Quest for the Elusive Multilateral Agreement on Investment*, 24 FORDHAM INT’L L.J. 275 (2000).

<sup>3</sup> See Trans-Pacific Strategic Economic Partnership Agreement, available at <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/main-agreement.pdf> (last visited on Sep. 9, 2013). For details, see M. Lewis, *Expanding the P-4 Trade Agreement into a Broader Trans-Pacific Partnership: Implications, Risks and Opportunities*, 4 ASIAN J. WTO & INT’L HEALTH L. & POL’Y 401(2009).

<sup>4</sup> P4 Agreement art. 20.6.

<sup>5</sup> See Trans-Pacific Partnership Negotiations History, available at <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/index.php#history> (last visited on Sep. 9, 2013).

<sup>6</sup> P4 Agreement art. 20.1.

<sup>7</sup> See Investment Chapter (leaked) of TPP negotiations, available at <http://www.citizenstrade.org/ctc/wp-content/uploads/2012/06/tppinvestment.pdf> (last visited on Sep. 1, 2013).