

## DIGEST

### ASIA-PACIFIC GENERAL

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## Trans-Pacific Partnership (TPP) Agreement was Reached

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Ad hoc Editorial Committee\*

The Trans-Pacific Partnership (“TPP”) Agreement was finally reached on October 5, 2015 between twelve member States including: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam. As a kind of mega regional trade agreement, the main goal of the TPP, in essence, was to promote “Trade and trade-related issues,”<sup>1</sup> spanning over thirty chapters. The Agreement is trying to provide a horizontal framework to achieve the intrinsic goals laid under the Partnership. The major player of the TPP, the US, largely views the Partnership to be a ‘companion’ agreement to the Transatlantic Trade and Investment Partnership (“TIIP”).

The focus of the Agreement is on several factors, with pressure mounting on the Obama administration to deliver the promises made while projecting a favorable case for the TPP—what will the average, middle-class man gain from the TPP?<sup>2</sup> Although there had been skepticism on the contents of the TPP specifically on agriculture, intellectual property, services and investments, the summary issued by the Office of the United States Trade Representatives (“USTR”) does not address pertinent issues in detail. The official text of the Agreement is to be first released for public scrutiny on the website of the Ministry of Foreign Affairs &

<sup>1</sup> Office of the United States Trade Representative, Press Release, Summary of the Trans-Pacific Agreement, Oct. 2015, available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership> (last visited on Nov. 5, 2015)

<sup>2</sup> D. Johnson, *What to Look for When the Trans-Pacific Partnership Text is Released*, HUFFINGTON POST, Nov. 4, 2015, available at [http://www.huffingtonpost.com/dave-johnson/what-to-look-for-when-the\\_b\\_8473562.html](http://www.huffingtonpost.com/dave-johnson/what-to-look-for-when-the_b_8473562.html) (last visited on Nov. 5, 2015).

Trade of the Government of New Zealand.<sup>3</sup> Over the course of the total seven years of negotiations held in absolute secrecy, the ire of the public, professionals and individuals from across the world has been raised at the non-issue of any part of the text of the Partnerships.<sup>4</sup>

The thirty chapters to the TPP cover expansive areas including agriculture, textile, and intellectual property, etc. This text will scrutinize some parts of the Partnership that have received backlash from the public such as investment, intellectual property and dispute resolution.

Essentially, the TPP makes the efforts to be rid of as many trade barriers as possible in order to arrive at an effective means of economic integration. In order to ensure this, the framework of the Agreement speaks of the creation of a 'Negative List', meaning that the member States are fully open to foreign investors, except where they have taken an exception in one of the two country-specific annexes: (1) current measures on which a party accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization, and (2) measures and policies on which a Party retains full discretion in the future. The TPP places emphasis on the obligations found in various trade agreements - National Treatment, Most-Favored Nation Treatment and market access. However, it is to be noted that this emphasis also applies to transfer and movement of funds between the countries.

In terms of intellectual property rights and labor issues, consistent fears have been raised by academics such as Joseph Stiglitz<sup>5</sup> and Noam Chomsky,<sup>6</sup> of the repercussions of a forceful neo-liberal trade regime on countries such as Vietnam which could be forced to regress its laws and open its economy to the likes of Wall Street. This fear is further supported by the dispute resolution clauses which provide a means by which the investor can claim monetary damages and compensation for any loss caused to the investor by a change of the laws of the host country or otherwise unexpected off the investment so made.

In conclusion, the fears exhibited by economists and academics are valid, in that the TPP reads like a document that may potentially take advantage of countries'

<sup>3</sup> New Zealand Ministry of Foreign Affairs & Trade, *Text of the Trans-Pacific Partnership*, (Nov. 5, 2015), available at <http://www.mfat.govt.nz/Treaties-and-International-Law/01-Treaties-for-which-NZ-is-Depositary/0-Trans-Pacific-Partnership-Text.php> (last visited on Nov. 5, 2015)

<sup>4</sup> J. Stiglitz, *On the Wrong Side of Globalization*, N.Y. TIMES, Mar. 15, 2014, available at <http://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization> (last visited on Nov. 5, 2015)

<sup>5</sup> *Id.*

<sup>6</sup> Z. Carter & R. Grim, Noam Chomsky: Obama Trade Deal A 'Neoliberal Assault' To Further Corporate 'Domination,' available at <https://www.youtube.com/watch?v=yf1H2BSOxqs> (last visited on Nov. 15, 2015)