

Outlines of the Trans-Pacific Partnership Agreement

ENHANCING TRADE AND INVESTMENT, SUPPORTING JOBS, ECONOMIC GROWTH AND DEVELOPMENT: OUTLINES OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

On November 12, 2011, the Leaders of the nine Trans-Pacific Partnership countries – Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States – announced the achievement of the broad outlines of an ambitious, 21st-century Trans-Pacific Partnership (TPP) agreement that will enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs.

The agreement's broad framework is as follows:

Key Features

In reporting to Leaders on the achievement of the broad outlines of an agreement, the Trade Ministers identified five defining features that will make TPP a landmark, 21st-century trade agreement, setting a new standard for global trade and incorporating next-generation issues that will boost the competitiveness of TPP countries in the global economy.

- o Comprehensive market access: to eliminate tariffs and other barriers to goods and services trade and investment, so as to create new opportunities for our workers and businesses and immediate benefits for our consumers.

- o Fully regional agreement: to facilitate the development of production and supply chains among TPP members, supporting our goal of creating jobs, raising living standards, improving welfare and promoting sustainable growth in our countries.

- o Cross-cutting trade issues: to build on work being done in APEC and other fora by incorporating in TPP four new, cross-cutting issues. These are:
 - Regulatory coherence. Commitments will promote trade between the countries by making trade among them more seamless and efficient.

 - Competitiveness and Business Facilitation. Commitments will enhance the domestic and regional competitiveness of each TPP country's economy and promote economic integration and jobs in the region, including through the development of regional production and supply chains.

 - Small- and Medium-Sized Enterprises. Commitments will address concerns small- and medium-sized enterprises have raised about the difficulty in understanding and using trade agreements, encouraging small- and medium-sized enterprises to trade internationally.

 - Development. Comprehensive and robust market liberalization, improvements in trade and investment enhancing disciplines, and other commitments, including a mechanism to help all TPP countries to effectively implement the Agreement and fully realize its benefits, will serve to strengthen institutions important for economic development and governance and thereby contribute significantly to advancing TPP countries' respective economic development priorities.

- o New trade challenges: to promote trade and investment in innovative products and services, including related to the digital economy and green technologies, and to ensure a competitive business environment across the TPP region.
- o Living agreement: to enable the updating of the agreement as appropriate to address trade issues that emerge in the future as well as new issues that arise with the expansion of the agreement to include new countries.

Scope

- The agreement is being negotiated as a single undertaking that covers all key trade and trade-related areas. In addition to updating traditional approaches to issues covered by previous free trade agreements (FTAs), the TPP includes new and emerging trade issues and cross-cutting issues.
- More than twenty negotiating groups have met over nine rounds to develop the legal texts of the agreement and the specific market access commitments the TPP countries will make to open their markets to each others' goods, services, and government procurement.
- All of the nine countries also have agreed to adopt high standards in order to ensure that the benefits and obligations of the agreement are fully shared. They also have agreed on the need to appropriately address sensitivities and the unique challenges faced by developing country members, including through trade capacity building, technical assistance, and staging of commitments as appropriate.
- A set of new, cross-cutting commitments are intended to reduce costs, enable the development of a more seamless trade flows and trade networks between TPP members, encourage the participation of small- and medium-sized enterprises in international trade, and promote economic growth and higher living standards.
- The negotiating teams have proposed new commitments on cross-cutting issues in traditional chapters and also have made substantial progress toward agreement on separate, stand-alone commitments to address these issues.

Legal Texts

- The negotiating groups have developed consolidated legal text in virtually all negotiating groups. In some areas, text is almost complete; in others, further work is needed to finalize text on specific issues. The texts contain brackets to indicate where differences remain.
- The legal texts will cover all aspects of commercial relations among the TPP countries. The following are the issues under negotiation and a summary of progress.
 - o Competition. The competition text will promote a competitive business environment, protect consumers, and ensure a level playing field for TPP companies. Negotiators have made significant progress on the text, which includes commitments on the establishment and maintenance of competition laws and authorities, procedural fairness in competition law enforcement, transparency, consumer protection, private rights of action and technical cooperation.
 - o Cooperation and Capacity Building. The TPP countries agree that capacity building and other forms of cooperation are critical both during the negotiations and post-conclusion to support TPP countries' ability to implement and take advantage of the agreement. They recognize that capacity building activities can be an effective tool in helping to address specific needs of developing countries in meeting the high standards the TPP countries have agreed to seek. In this spirit, several cooperation and capacity building activities have already been implemented in response to specific requests and additional activities are being planned to assist

developing countries in achieving the objectives of the agreement. The TPP countries also are discussing specific text that will establish a demand-driven and flexible institutional mechanism to effectively facilitate and cooperation and capacity building assistance after the TPP is implemented.

- o Cross-Border Services. TPP countries have agreed on most of the core elements of the cross-border services text. This consensus provides the basis for securing fair, open, and transparent markets for services trade, including services supplied electronically and by small- and medium-sized enterprises, while preserving the right of governments to regulate in the public interest.

- o Customs. TPP negotiators have reached agreement on key elements of the customs text as well as on the fundamental importance of establishing customs procedures that are predictable, transparent and that expedite and facilitate trade, which will help link TPP firms into regional production and supply chains. The text will ensure that goods are released from customs control as quickly as possible, while preserving the ability of customs authorities to strictly enforce customs laws and regulations. TPP countries also have agreed on the importance of close cooperation between authorities to ensure the effective implementation and operation of the agreement as well as other customs matters.

- o E-Commerce. The e-commerce text will enhance the viability of the digital economy by ensuring that impediments to both consumer and businesses embracing this medium of trade are addressed. Negotiators have made encouraging progress, including on provisions addressing customs duties in the digital environment, authentication of electronic transactions, and consumer protection. Additional proposals on information flows and treatment of digital products are under discussion.

- o Environment. A meaningful outcome on environment will ensure that the agreement appropriately addresses important trade and environment challenges and enhances the mutual supportiveness of trade and environment. The TPP countries share the view that the environment text should include effective provisions on trade-related issues that would help to reinforce environmental protection and are discussing an effective institutional arrangement to oversee implementation and a specific cooperation framework for addressing capacity building needs. They also are discussing proposals on new issues, such as marine fisheries and other conservation issues, biodiversity, invasive alien species, climate change, and environmental goods and services.

- o Financial Services. The text related to investment in financial institutions and cross-border trade in financial services will improve transparency, non-discrimination, fair treatment of new financial services, and investment protections and an effective dispute settlement remedy for those protections. These commitments will create market-opening opportunities, benefit businesses and consumers of financial products, and at the same time protect the right of financial regulators to take action to ensure the integrity and stability of financial markets, including in the event of a financial crisis.

- o Government Procurement. The text of the Government Procurement Chapter will ensure that procurement covered under the chapter is conducted in a fair, transparent, and non-discriminatory manner. The TPP negotiators have agreed on the basic principles and procedures for conducting procurement under the chapter, and are developing the specific obligations. The TPP partners are seeking comparable coverage of procurement by all the countries, while recognizing the need to facilitate the opening of the procurement markets of developing countries through the use of transitional measures.

- o Intellectual Property. TPP countries have agreed to reinforce and develop existing World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) rights and obligations to ensure an effective and balanced approach to intellectual property rights among the TPP countries. Proposals are under discussion on many forms of intellectual property, including trademarks, geographical indications, copyright and related rights, patents, trade secrets, data required for the approval of certain regulated products, as well as

intellectual property enforcement and genetic resources and traditional knowledge. TPP countries have agreed to reflect in the text a shared commitment to the Doha Declaration on TRIPS and Public Health.

o Investment. The investment text will provide substantive legal protections for investors and investments of each TPP country in the other TPP countries, including ongoing negotiations on provisions to ensure non-discrimination, a minimum standard of treatment, rules on expropriation, and prohibitions on specified performance requirements that distort trade and investment. The investment text will include provisions for expeditious, fair, and transparent investor-State dispute settlement subject to appropriate safeguards, with discussions continuing on scope and coverage. The investment text will protect the rights of the TPP countries to regulate in the public interest.

o Labor. TPP countries are discussing elements for a labor chapter that include commitments on labor rights protection and mechanisms to ensure cooperation, coordination, and dialogue on labor issues of mutual concern. They agree on the importance of coordination to address the challenges of the 21st-century workforce through bilateral and regional cooperation on workplace practices to enhance workers' well-being and employability, and to promote human capital development and high-performance workplaces.

o Legal Issues. TPP countries have made substantial progress on provisions concerning the administration of the agreement, including clear and effective rules for resolving disputes and are discussing some of the specific issues relating to the process. TPP countries also have made progress on exceptions from agreement obligations and on disciplines addressing transparency in the development of laws, regulations, and other rules. In addition, they are discussing proposals related to good governance and to procedural fairness issues in specific areas.

o Market Access for Goods. The TPP countries have agreed to establish principles and obligations related to trade in goods for all TPP countries that ensure that the market access that they provide to each other is ambitious, balanced, and transparent. The text on trade in goods addresses tariff elimination among the partners, including significant commitments beyond the partners' current WTO obligations, as well as elimination of non-tariff measures that can serve as trade barriers. The TPP partners are considering proposals related to import and export licensing and remanufactured goods. Additional provisions related to agricultural export competition and food security also are under discussion.

o Rules of Origin. TPP countries have agreed to seek a common set of rules of origin to determine whether a product originates in the TPP region. They also have agreed that TPP rules of origin will be objective, transparent and predictable and are discussing approaches regarding the ability to cumulate or use materials from within the free trade area in order to make a claim that a product is originating. In addition, the TPP countries are discussing the proposals for a system for verification of preference claims that is simple, efficient and effective.

o Sanitary and Phytosanitary Standards (SPS). To enhance animal and plant health and food safety and facilitate trade among the TPP countries, the nine countries have agreed to reinforce and build upon existing rights and obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. The SPS text will contain a series of new commitments on science, transparency, regionalization, cooperation, and equivalence. In addition, negotiators have agreed to consider a series of new bilateral and multilateral cooperative proposals, including import checks and verification.

o Technical Barriers to Trade (TBT). The TBT text will reinforce and build upon existing rights and obligations under the World Trade Organization Agreement on Technical Barriers, which will facilitate trade among the TPP countries and help our regulators protect health, safety, and the environment and achieve other legitimate policy objectives. The text will include commitments on compliance periods, conformity assessment procedures, international standards, institutional mechanisms, and transparency. The TPP countries also are discussing disciplines on conformity assessment procedures, regulatory cooperation, trade facilitation, transparency, and

other issues, as well as proposals that have been tabled covering specific sectors.

o Telecommunications. The telecommunications text will promote competitive access for telecommunications providers in TPP markets, which will benefit consumers and help businesses in TPP markets become more competitive. In addition to broad agreement on the need for reasonable network access for suppliers through interconnection and access to physical facilities, TPP countries are close to consensus on a broad range of provisions enhancing the transparency of the regulatory process, and ensuring rights of appeal of decisions. Additional proposals have been put forward on choice of technology and addressing the high cost of international mobile roaming.

o Temporary Entry. TPP countries have substantially concluded the general provisions of the chapter, which are designed to promote transparency and efficiency in the processing of applications for temporary entry, and ongoing technical cooperation between TPP authorities. Specific obligations related to individual categories of business person are under discussion.

o Textiles and Apparel. In addition to market access on textiles and apparel, the TPP countries also are discussing a series of related disciplines, such as customs cooperation and enforcement procedures, rules of origin and a special safeguard.

o Trade Remedies. TPP countries have agreed to affirm their WTO rights and obligations and are considering new proposals, including obligations that would build upon these existing rights and obligations in the areas of transparency and procedural due process. Proposals also have been put forward relating to a transitional regional safeguard mechanism.

Tariff Schedules and Other Market-Opening Packages

- The TPP tariff schedule will cover all goods, representing some 11,000 tariff lines. The nine countries also are developing common TPP rules of origin, and are weighing proposals now for how to do this most effectively and simply.
- Services and investment packages will cover all service sectors. To ensure the high-standard outcome the nine countries are seeking, the TPP countries are negotiating on a “negative list” basis, which presumes comprehensive coverage but allows countries to negotiate specific exceptions to commitments in specific service sectors.
- Government procurement packages are being negotiated with each country seeking to broaden coverage to ensure the maximum access to each others’ government procurement markets, while recognizing each others’ sensitivities.

Next Steps

- Leaders of the nine TPP countries have instructed negotiators to meet in early December, and at that time to schedule additional negotiating rounds.