

Transpacific Partnership (TPP)

Does the Global Mega-Deal Live Up to the Hype?

What you Need to Know

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The Trans-Pacific Partnership (TPP) is a new Asia-Pacific Rim mega-regional trade and investment agreement with 12 member states - the United States, Canada, Chile, Brunei Singapore, New Zealand, Australia, Japan, Malaysia, Mexico, Peru, and Vietnam. Together, these states represent a market of nearly 800 million consumers and a combined GDP of \$28.5 trillion (roughly 40% of the world's economy).

There has been a lot promised in the TPP and a flurry of public debate. The December 3, 2015 ABA Section of International Law Teleconference will carefully consider the details in the legal text of the TPP and provide ABA Members with an understanding of whether this Global Mega-Deal really lives up to its hype.

QUICKFACTS: Scale and Scope of the TPP Agreement

The TPP text contains 30 Chapters which include the following:

- Market Access for Goods
- Textiles and Apparel
- Rules of Origin and Origin Procedures
- Customs Administration and Trade Facilitation
- Sanitary and Phytosanitary Measures
- Technical Barriers to Trade
- Trade Remedies
- Investment
- Cross-Border Trade in Services
- Financial Services
- Temporary Entry for Business Persons
- Telecommunications
- Electronic Commerce
- Government Procurement
- Competition Policy
- State-Owned Enterprises and Designated Monopolies
- Intellectual Property
- Labour
- Environment
- Development
- Competitiveness and Business Facilitation
- Small and Medium-Sized Enterprises
- Regulatory Coherence
- Transparency and Anticorruption
- Institutional Provisions
- Dispute Settlement

Next Steps for the TPP in the US

States are now in the process of signature and ratification. On November 5, 2015, President Obama sent notice to Congress that he intends to sign the TPP, pursuant to the Fast Track legal authority contained in the Trade Promotion Authority. The earliest day the President could sign the TPP would be February 3, 2015. Once the TPP is signed, Congress must either approve or reject the TPP within 90 *legislative* days once it is formally submitted for review.

Government Comments on Key TPP Issues

Market Access, Tariffs & Customs

On market access, the US Trade Representative (USTR) states:

- TPP will make it easier for American entrepreneurs, farmers, and small business owners to sell Made-In-America products abroad by eliminating more than 18,000 taxes & other trade barriers on American products across the 11 other countries in the TPP—barriers that put American products at an unfair disadvantage today.

On customs, the USTR reports:

- TPP reduces costs for legitimate traders; strengthens enforcement at the border; and provides benefits to small businesses, for whom paperwork costs and delays can make the difference between being competitive or not. TPP requires countries to:
- Publish all customs laws, regulations, and procedures on the Internet, including in English whenever possible.
- Ensure that to the greatest extent possible, shipments move through ports within a time period no longer than necessary to comply with customs laws, and countries provide advance rulings on valuation and other matters to avoid unnecessary delays on arrival.
- Provide expedited customs treatment to express delivery shipments, and set ‘*de minimis*’ levels for low-value shipments under which customs will not impose tariffs.
- Strengthen cooperation against illegal trade in counterfeit goods, wildlife trafficking, and goods illegally transshipped through TPP countries from third countries to evade tariffs.
- Administer customs penalties impartially, with rules to avoid conflicts of interest.

Investment Protection

Canada's Department of Foreign Affairs reports:

- A comprehensive TPP Investment Chapter establishes a strong, rules-based framework, including provisions on expropriation. This provides Canadian investors with a stable, predictable investment environment in TPP countries. The Agreement also contains provisions to treat investors from Canada and TPP countries in a non-discriminatory manner. In short, TPP investment provisions, including access to international arbitration for dispute settlement, can help to build Canadian investor confidence in TPP markets.

The USTR states:

- TPP specifically protects the right of governments to regulate in the public interest. We would never negotiate away our right to do so, and we don't ask other countries to do so either. This is true for public health and safety, the financial sector, the environment, and any other area where governments seek to regulate.

Dispute Settlement

On Investor-State Dispute Settlement, the USTR has stated:

- U.S. businesses and investors operating abroad often face a heightened risk of bias and discrimination. Investor-state dispute settlement (ISDS) is a mechanism that provides neutral international arbitration to ensure that Americans doing business abroad receive the same kinds of protections – such as protection from discrimination and expropriation without compensation – that are available to companies and investors doing business in the United States under U.S. law. This mechanism allows for an impartial, law-based approach to resolve conflicts and promotes development, rule of law, and good governance around the world. TPP also serves to modernize and reform ISDS by including clearer language and stronger safeguards that raise standards above virtually all of the other 3,000 plus investment agreements in force today.
- ISDS ensures that American businesses and investors do not face discrimination, nationalization, or abuse when doing business abroad. Through TPP, we can put in place higher standards and stronger safeguards for ISDS.

Temporary Business Entry and Immigration

On temporary entry for business persons, the USTR states:

- As businesses seek to establish and develop opportunities across the region, they need to obtain visas. The Temporary Entry for Business Persons Chapter ensures efficient visa processing procedures and transparency related to requirements for the temporary entry application process. No provision in TPP will require changes to U.S. immigration law, regulations, policy, or practice because our system already operates in a manner consistent with the provisions in the Temporary Entry chapter. In addition, while the other 11 TPP Parties have agreed upon country-specific reciprocal commitments on access for each other's business persons, the United States is not undertaking any commitments in this area.

Speaker Biographies

Moderator: Barry Appleton, Appleton & Associates International Lawyers, Toronto, CA

Barry Appleton is an international lawyer specializing in international trade and investment law and is the Managing Partner of Appleton & Associates International Lawyers. Mr. Appleton is the author of several publications on the North American Free Trade Agreement including *Navigating NAFTA* and *NAFTA: Legal Text and Interpretive Materials*. He is the Editor-In-Chief of the *Appleton Investor State Reports* and the *International Investment Treaty Service* on Westlaw.

Mr. Appleton has served as lead counsel for investors in a large number of investor-state disputes. These cases, spanning four continents, involve governmental failure to follow the rule of law and due process. They include obtaining compensation for wrongful expropriation, breaches of international fairness standards, discrimination and failures to provide national or most-favored nation treatment. For more information see:

<http://www.appletonlaw.com/bappleton.html>

Les Glick, Porter Wright, Washington D.C.

Les Glick is the Co-Chair of the ABA Section of International Law Committee on Customs Law. He has extensive experience in the areas of international trade and customs law and devotes his time to handling major international trade cases before the U.S. International Trade Commission, the U.S. Department of Commerce, the Office of the U.S. Trade Representative, and the Court of International Trade. He has handled aspects of cases arising under the U.S. Customs laws involving classification, valuation, country of origin marking and customs fraud, and gray market and security issues (Customs Trade Partnership Against Terrorism). He also has directed matters involving export controls, the Foreign Corrupt Practices Act, the Office of Foreign Assets Control and the Committee on Foreign Investment in the U.S. For more information see:

http://www.porterwright.com/les_glick/

Cristina Cardenas, Astigarraga Davis, Miami, FL

Cristina Cárdenas is the outgoing Chair of the Disputes Division of the ABA Section of International Law. Based in Miami, Florida, her practice focuses on international litigation and arbitration. Her experience includes the representation of U.S. and Latin American corporate clients in a variety of business related disputes. She serves as counsel in US courts and in arbitral tribunals in the US and abroad in a wide variety of industry sectors.

For more information see: <http://www.astidavis.com/bios/cardenas.html>

Professor Robert Howse, New York University, New York

Robert Howse is the Lloyd C. Nelson Professor of International Law at NYU School of Law. Professor Howse is a noted authority on International Economic Law, including the World Trade Organization and international investment treaty law. Professor Howse has a B.A. and a LL.B from the University of Toronto and an LL.M. from the Harvard Law School.

Previously, Professor Howse taught law at the University of Toronto and the University of Michigan Law School. He has been a visiting professor at Harvard Law School, Tel Aviv University, Hebrew University of Jerusalem, the University of Paris 1 (Pantheon-Sorbonne), Tsinghua University, and Osgoode Hall Law School in Canada and taught in the Academy of European Law, European University Institute, Florence.

Since 2000, Professor Howse has been a member of the faculty of the World Trade Institute, Berne, Master's in International Law and Economics Program. He is a frequent consultant or adviser to government agencies and international organizations such as the OECD, the World Bank, UNCTAD, the Inter-American Development Bank, the Law Commission of Canada and the UN Office of the High Commissioner for Human Rights. He is a contributor to the American Law Institute project on WTO Law. He has acted as a consultant to the investor's counsel in several NAFTA investor-state arbitrations. He is a core team member of the Renewable Energy and International Law (REIL) project, a private/public partnership that includes, among others, Yale University, the law firm of Baker & McKenzie and the investment bank Climate Change Capital. Howse serves on the editorial advisory boards of the European Journal of International Law and Legal Issues in Economic Integration. He is sub-series editor for the Oxford University Press Commentaries on the WTO treaties.

For more information see:

<https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.biography&personid=28550>

Christine Alden, Weiss, Alden & Polo, P.A., Miami, FL

Christine Alden is partner with Weiss, Alden & Polo, P.A where she practices immigration law. Established in 1976, this Miami firm offers global representation of individuals and businesses seeking US immigration solutions. Christine is a member of the American Immigration Lawyers Association (AILA) and currently serves the organization in an elected position as Board Member at Large of the South Florida Chapter of AILA. The South Florida Chapter of AILA is made up of over 800 attorneys.

For more information see: <http://www.weissaldenandpolo.com/Attorneys/Christine-J-Alden.shtml>

TPP Key Links

TPP Text

The Official Depository for the TPP is the Government of New Zealand. The text is available at:
<http://tpp.mfat.govt.nz/text>

Side Letters [links provided to available TPP side letters which augment the TPP]

USA

<https://medium.com/the-trans-pacific-partnership/side-instruments-fb47f480c500>

Canada

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tpf/instruments.aspx?lang=eng>

Australia

<http://dfat.gov.au/trade/agreements/tpp/official-documents/Pages/official-documents.aspx>

New Zealand

<http://tpp.mfat.govt.nz/text>

Malaysia

<http://fta.miti.gov.my/index.php/pages/view/272>