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Sources of Information on the Trans-Pacific Partnership

By Barbara H. Garavaglia

The Trans-Pacific Partnership Agreement (TPP) is a free trade agreement between 12 countries in the Asia Pacific region: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. The agreement, signed by the U.S. and other participating countries in Auckland, New Zealand on February 4, 2016, “promotes economic integration to liberalise trade and investment” and “bring economic growth” to the region and participating countries.¹ To be implemented, it must be ratified by at least six of the signatory countries during the two-year ratification period.² The next step for the TPP in the U.S. is congressional approval under Trade Promotion Authority legislation renewed by the Senate in June 2015.³

The TPP has been referred to as a “mega-regional” trade agreement that is “ambitious in scope, reaching far into the internal legal organs of countries...and in geography, stretching across oceans and regions.”⁴

The TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; electronic commerce; government procurement; intellectual property; labour; environment; “horizontal” chapters meant to ensure that TPP fulfils its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions.⁵

The TPP began as the Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand, and Singapore. It was signed in 2005

and enacted in 2006.⁶ The U.S. announced it would begin negotiations to join this “open agreement” in 2008 and, as other countries followed, the TPP process was launched.⁷

In September 2008, then-U.S. Trade Representative Susan Schwab notified Congress of President Bush’s intent to launch negotiations for the United States to join the Trans-Pacific Partnership (TPP). Subsequently, on Dec. 14, 2009, U.S. Trade Representative Ron Kirk notified Congress of President Obama’s intent to enter the TPP.⁸

The final text of the TPP is the result of 19 negotiating rounds and numerous meetings between the trade delegations of the 12 participating countries from 2010 to 2015.⁹

Anyone following the TPP is well aware of the controversy surrounding it.

The ideological storms surrounding TPP... are not unusual; trade deals do tend to court controversy. It follows that a mega-regional free trade agreement will have mega-controversies to match it. Their mega-status is unavoidable as it is a consequence of globalisation, of the internet and of multinational companies’ global supply chains....¹⁰

Discussions surrounding other free trade agreements have also been politically charged in the U.S. during years of negotiation and development spanning administrations across the political spectrum. The General Agreement on Tariffs and Trade of 1948, which culminated in the creation of the World Trade Organization in 1995;¹¹ the North American Free Trade Agreement of 1994; the Dominican Republic-Central America Free Trade Agreement of 2004; and work on the development of the Transatlantic Trade and Investment Partnership between the U.S. and

the European Union beginning in 2013 all resulted in protest and debate in the U.S. and other participating countries. Politicians, the public, the media, industry and citizens groups, academics, and others either express strong concerns about the negative impact such agreements and globalization are having or might have on the U.S. economy, jobs, labor, and environmental standards or applaud free trade agreements for the positive effects these agreements have or will have in the same areas of concern.

One reason for the sense of uncertainty, unease, and concern surrounding free trade agreements in general and the TPP in particular is that the negotiations are not public and have been described by many as “shrouded in secrecy.”¹² This, combined with the large number of polemical articles, blogs, editorials, speeches, and news reports for and against free trade and the TPP, makes it difficult to find neutral information about the agreement and its potential impact on the U.S. and regional economies, regulations in affected industries, health, safety, and the environment. While it is true that the negotiating rounds have not been transparent, information is regularly shared with Congress.

Congress had an active role in the TPP negotiations through oversight, consultations with the Administration, and formal negotiating objectives established in Trade Promotion Authority (TPA) legislation. Ultimately, Congress would need to pass implementing legislation before the TPP could take effect in the United States. The potential impacts of the agreement may be an active area of debate during the second session of the 114th Congress.¹³

Fortunately, it is possible to find useful sources of information despite the lack of

transparency relating to the debates, discussions, and documents of the negotiations themselves.

Two good overviews of the TPP are provided in reports published by the Congressional Research Service: *The Trans-Pacific Partnership (TPP): In Brief* by Ian F.ergusson, Mark A. McMinimy, and Brock R. Williams (February 9, 2016), available online at <https://www.fas.org/sgp/crs/row/R44278.pdf>; and *The Trans-Pacific Partnership: Strategic Implications* by Brock R. Williams et al. (February 3, 2016), available online at <https://www.fas.org/sgp/crs/row/R44361.pdf>.

Information about the TPP is available on government, international organization, think tank, and nonprofit organization websites. Those mentioned below include commentaries, primary documents, analysis, opinions, blogs, and other information.

Government

The U.S. Government Printing Office Federal Digital System (FDsys) provides access to the full text of congressional hearings and documents relating to the TPP as well as debates and statements in the *Congressional Record* and presidential statements and documents in the *Public Papers of the President and Compilation of Presidential Documents*. One simple way to find relevant materials in FDsys is to use the advanced search function at <https://www.gpo.gov/fdsys/search/advanced/advsearchpage.action>. Researchers should first select “Available Collections” of interest (e.g., Congressional Hearings) and then run a full text or title search (e.g., trans-pacific partnership.) The full text of the documents retrieved are available in PDF and HTML formats.

The Office of the United States Trade Representative website, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership>, includes the full text of the TPP, issue-by-issue information, Advisory Committee reports on the Trans-Pacific Partnership, and fact sheets as well as trade facts for the other 11 countries that signed the agreement. When using this site, you will quickly notice that the Office of the U.S. Trade Representative puts an entirely positive spin on the agreement; that said, the

site does include some useful information. Another area of the site, <https://ustr.gov/tpp>, is even more focused on selling the agreement to the public and is not particularly useful for research purposes.

International organizations

One of the best sources of information about the TPP and many other trade agreements is the Foreign Trade Information System of the Organization of American States at http://www.sice.oas.org/TPD/TPP/TPP_e.ASP. In addition to providing the legally verified text of the agreement, the site also includes articles and studies, negotiating history, short descriptions of topics covered in the various negotiating rounds, statements of heads of state, and information on recent developments. It also provides invaluable links to TPP governmental websites of other participating countries; these are especially useful for obtaining non-U.S. perspectives on the agreement.

Running keyword searches in other international organization websites relating to trade will also yield materials on the TPP; for example, the World Trade Organization website at <https://www.wto.org> and the International Trade Center (a joint agency of the United Nations and WTO) website at <http://www.intracen.org>. The intellectual property components of the TPP are discussed in the World Intellectual Property Organization website at <http://www.wipo.int/portal/en/index.html>, while commentary on provisions relating to the environment are found by searching the United Nations Environment Programme website at <http://unep.org>.

Think tanks

The Council on Foreign Relations website at <http://www.cfr.org> includes news, opinion pieces, podcasts, and other materials on the TPP. To find information, enter your keywords in the search box at the top right. The site also includes blogs. The “Asia Unbound” blog contains many entries on the TPP.

The Brookings Institution website at <http://www.brookings.edu> also includes news and commentary on the partnership and provides a box at the top right for keyword

searching. The American Enterprise Institute includes many commentaries on the TPP in its website at <https://www.aei.org>.

Specialized nonprofits

For analysis and commentary on particular topics covered or affected by the TPP, it is useful to search the websites of specialized nonprofit organizations. Since the agreement is so broad in its coverage, it is being discussed in a vast number of areas including food safety, the chemical industry, labor, and the environment to name a few. If you are interested in environmental or labor issues, for example, searching within the websites of environmental or labor organizations will also yield information, analysis, and commentary. For example, the AFL-CIO website at <http://www.aflcio.org> includes blog posts, articles, and commentary on the TPP and its possible impact on labor, and the Sierra Club at website <http://www.sierraclub.org> contains similar information.

Books

- Gantz, *Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives* (New York: Cambridge University Press, 2013)
- Lim, Elms & Low, eds, *The Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement* (Cambridge: Cambridge University Press, 2012)
- Palit, *The Trans-Pacific Partnership, China and India: Economic and Political Implications* (London: Routledge, Taylor & Francis Group, 2014)
- Petri, Plummer & Zhai, eds, *The Trans-Pacific Partnership and Asia-Pacific Integration: a Quantitative Assessment* (Washington, DC: Peterson Institute for International Economics, 2012)
- Schott, Kotschwar & Muir, *Understanding the Trans-Pacific Partnership* (Washington, DC: Peterson Institute for International Economics, 2013)
- Voon, *Trade Liberalisation and International Co-operation: a Legal Analysis of*

the Trans-Pacific Partnership Agreement (Cheltenham, UK: Edward Elgar, 2013)

Selected journal articles

- Backer, *The Trans-Pacific Partnership: Japan, China, the U.S., and the Emerging Shape of a New World Trade Regulatory Order*, 13 Wash Univ Global Studies L R 49 (2014)
- Bowen, *Preparing for Tomorrow's Trans-Pacific Partnership*, 23 California Int'l L J 14–18 (2015)
- Bucci, *Responsible Patent Protections: Preserving Public Health Objectives in the Trans-Pacific Partnership Agreement*, 26 Pacific McGeorge Global Business & Development L J 213–234 (2013)
- Downs, *The Trans-Pacific Partnership and Conflicting Customary International Norms*, 26 Georgetown J Legal Ethics 661–682 (2013)
- Du, *Explaining China's Tripartite Strategy Toward a Trans-Pacific Partnership Agreement*, 18 J Int'l Economic Law 407–432 (2015)
- Fazzone, *The Trans-Pacific partnership—towards a free trade agreement of Asia-Pacific?*, 43 Georgetown J Int'l L 695 (2012)
- Hufbauer & Cimino-Isaacs, *How will TPP and TTIP Change the WTO System?*, 18 J Int'l Economic L 679–696 (2015)
- Kilic, *Defending the Spirit of the DOHA Declaration in Free Trade Agreements: Trans-Pacific Partnership and Access to Affordable Medicines*, 12 Loyola Univ of Chicago Int'l L R 23–57 (2014)
- Lewis, *The Trans-Pacific Partnership: New Paradigm or Wolf in Sheep's Clothing?*, 34 Boston College Int'l and Comparative L R 27–52 (2011)
- Mitchell, Voon, & Whittle, *Public Health and the Trans-Pacific Partnership Agreement*, 5 Asian J Int'l L 279–309 (2015)
- Sappideen & He, *Investor-state arbitration: The roadmap from the Multilateral Agreement on Investment to the Trans-Pacific Partnership Agreement*, 40 Federal L R 207–226 (2012)

- Tung, *Investor-State Dispute Settlement under the Trans-Pacific Partnership*, 23 California Int'l L J 19–25 (2015)
- Vincent, *The Trans-Pacific Partnership: Environmental Savior or Regulatory Carte Blanche?*, 23 Minnesota J Int'l L 1–46 (2014)
- Wilensky, *Reconciling International Investment Law and Climate Change Policy: Potential Liability for Climate Measures Under the Trans-Pacific Partnership*, 45 Environmental L Reporter 10,683–10,698 (2015)
- Yu, *TPP and Trans-Pacific Perplexities*, 37 Fordham Int'l L J 1,129–1,181 (2014)

Finally, no modern list of sources would be complete without at least one leaked document. In November 2013, WikiLeaks released a “secret” TPP document—the “Advanced Intellectual Property Chapter for All 12 Nations with Negotiating Positions (August 30, 2013 consolidated bracketed negotiating text).” This document and editorial commentary is available at https://wikileaks.org/tpp/?utm_source=dlvr.it&utm_medium=tumblr. ■



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ENDNOTES

1. Trans-Pacific Partnership Agreement, *Preamble* <<https://ustr.gov/sites/default/files/TPP-Final-Text-Preamble.pdf>>. All websites cited in this article were accessed April 10, 2016.
2. Howard, *Trans-Pacific Partnership trade deal signed, but years of negotiations still to come* (February 4, 2016) <<http://www.reuters.com/article/us-trade-tpp-idUSKCN0VD08S>>.
3. Weisman, *Trade Authority Bill Wins Final Approval in Senate*, The New York Times (June 24, 2015) <<http://www.nytimes.com/2015/06/25/business/>

trade-pact-senate-vote-obama.html?_r=0>; see also Office of the United States Trade Representative Executive Office of the President, *Trade Promotion Authority* <<https://ustr.gov/trade-topics/trade-promotion-authority>>; Brown, *TPP? TTIP? Key trade deal terms explained* (May 20, 2015) <<http://www.brookings.edu/blogs/brookings-now/posts/2015/05/20-trade-terms-explained>>.

TPA has been around since 1974. This temporary authority grants presidents the power to negotiate international trade agreements and then send them to Congress for a simple up or down vote. The goal of this “fast-track negotiating authority” (as it was formerly called) is to expedite the legislative process to avoid delays, amendments, or filibusters from Congress, and to ultimately pass a trade bill presented by the president and wrap up the negotiations within a few months.

4. Botsford, *Global free trade in the 21st century* (July 31, 2014) <<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=b33b60ed-54b6-472b-82fe-a4fc83dca5db>>.
5. Office of the United States Trade Representative Executive Office of the President, *Summary of the Trans-Pacific Partnership Agreement* <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>>.
6. Organization of American States Foreign Trade Information System, *Trans Pacific Partnership Agreement (TPP): Background and Negotiations* <http://www.sice.oas.org/TPD/TPP/TPP_e.ASP>.
7. *Id.*
8. Trans-Pacific Partnership, Hearing before the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, 112th Congress, First Session, Serial No. 112-TR4 (December 14, 2011), p 2 <<https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg76318/pdf/CHRG-112hhrg76318.pdf>>.
9. Organization of American States Foreign Trade Information System, *Trans Pacific Partnership Agreement (TPP): Background and Negotiations* <http://www.sice.oas.org/TPD/TPP/TPP_e.ASP>.
10. Botsford, *Global free trade in the 21st century* (July 31, 2014) <<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=b33b60ed-54b6-472b-82fe-a4fc83dca5db>>.
11. The GATT negotiations that resulted in the WTO spanned the administrations of Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, George H. W. Bush, and Clinton.
12. See, for example, Marcus, *A bogus argument against the trade deal*, The Washington Post (May 19, 2015) <https://www.washingtonpost.com/opinions/a-phony-argument/2015/05/19/85c3a026-fe4c-11e4-805c-c3f407e5a9e9_story.html>. Searching Google with the terms “Trans-Pacific Partnership” and “shrouded in secrecy” will yield hundreds of comments, websites, blog posts, and new stories describing the negotiations in this way.
13. Williams et al, *The Trans-Pacific Partnership: Strategic Implications* (February 3, 2016), p 1 <<https://www.fas.org/sgp/crs/row/R44361.pdf>>.