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The Trans-Pacific Partnership: Lessons from Negotiations

BY *Richard Katz*

The Trans-Pacific Partnership (TPP)—a proposed free trade agreement (FTA) encompassing twelve nations in Asia and the Americas—was intended to be the most far-reaching and comprehensive FTA yet negotiated. It goes beyond traditional market access issues to deal with the thorny problems in intellectual property rights, investment codes, and state-owned enterprises, in ways far beyond the World Trade Organization (WTO) or past FTAs negotiated by the United States. The hope was that the TPP would provide the architectural framework for economic interaction encompassing the entire trans-Pacific region, as other nations joined, including China.

Yet we now face the very real possibility that, unless a TPP agreement is signed by the first few months of 2015, the entire venture could go the way of the Doha Round of WTO talks, with unending negotiations that never reach agreement. That would be a great loss. For despite the flaws in the TPP, which will be discussed below, pro-TPP economists and business circles in the United States say that what has been achieved already in the talks is a big step forward. According to these experts, the benefits of taking more time to correct some of the shortcomings would be more than offset by the risk that further delay would mean indefinite postponement. The closer we get to national elections in 2016 in the United States and Japan, the harder ratification will become.

OBSTACLES TO RATIFICATION

Why does a deal with such potential economic gains face such tough political hurdles? Although many countries share the blame, this brief will focus on the lessons for U.S. policy.

The biggest hurdle is that the TPP talks have become bogged down in bilateral U.S.-Japan negotiations over a few farm goods. Japan is focused on protecting sectors like beef, pork, and dairy, holding the welfare of the nation's 46 million households hostage to the mere 100,000 households engaged in these sectors. Diet members have threatened to block the TPP if all tariffs in these sectors are removed. In the United States, beef and pork production each amount to just 0.2% of GDP. Yet, in July, 140 members of the House—107 Republicans and 33 Democrats—signed a letter suggesting that Japan (and Canada) be excluded from the TPP unless all these farm tariffs are removed. No other TPP country, except perhaps New Zealand, would go along with this. There will be either a TPP with Japan or no TPP at all.

Other nations have held back on earnest negotiations until they see the outcome of the U.S.-Japan talks. That leaves too little time to work out satisfactory solutions to intrinsically complex issues that matter far more for the economic future of the region: investment codes, intellectual property rights, state-owned enterprises, and dispute-resolution mechanisms. The irony is that on many of these bigger issues, the United States and Japan are in agreement.

The United States bears some responsibility for this outcome. At its insistence, the TPP lacks the most-favored-nation (MFN) provision that is the foundation for both the WTO and the European Union. MFN means that if Japan, for example, lowers its tariffs to 0% on a given product for the United States, it must lower them by the same amount for every other TPP country. MFN not only ensures that the strong do not exploit the weak, but it also promotes the highest level of efficiency and economic growth. Nonetheless, Washington figured that, by engaging in purely bilateral talks, it could get better deals from some TPP members than other nations received. But the result is that no other nation has an incentive to side with the United States vis-à-vis Japan. On the contrary, other countries have an incentive to delay until they see the outcome of those bilateral talks, lest they prematurely accept an inferior deal. Because of the horse-trading among various issues, a delay on market access talks also means a delay on all the other issues.

A second problem is increasing disenchantment with FTAs among both Democratic and Republican voters as well as the weakness of President Barack Obama among Democrats on Capitol Hill. That has made it impossible for Obama to gain passage of trade promotion authority (TPA), at least until after this November's congressional elections. The latter is critical to the TPP. Under TPA, once the president submits the TPP to Congress, it must be voted up or down within 90 legislative days. No amendments are allowed. Without TPA, amendments could be added that would force the United States to renegotiate the pact with all eleven other countries—a deal-killer. Moreover, the absence of TPA weakens the U.S. negotiating hand. Other nations understandably refuse to make their best offers out of fear that Congress will treat any concession as a floor, not a ceiling. Late last year, 150 of the 205 House Democrats signed a letter opposing renewal of TPA.

The lack of broad support for free trade has compelled U.S. trade negotiators to propitiate some of the corporate sectors that they hope will lobby for the TPP. One damaging consequence is U.S. insistence on a so-called investor-state dispute settlement (ISDS), which allows private corporations to sue governments that allegedly deny firms their rights under an FTA. For example, Philip Morris and R.J. Reynolds have launched arbitration cases against countries, including Australia and Canada, that want plain packaging on cigarettes, and they seek billions of dollars in "compensation." Canada backed down on its proposed rule in the face of this threat, and Australia now opposes having ISDS in the TPP. In the WTO, national governments, not private firms, decide whether to launch such cases.

THE NEED FOR A GRAND BARGAIN

The most important lesson is the need for a closer look at why TPP ratification is so difficult. The main reason is that a key Democratic constituency, labor, is inordinately hurt by FTAs. It is true that, among countries, free trade is a win-win proposition. But within each country, some sectors win and others lose. In a rich country like the United States, capital tends to win and labor lose.

The good news is that the gains to the winners far outweigh the harm to the losers. What is needed, therefore, is a "grand bargain." Business would get the free trade it wants, and from which consumers benefit. But some of those gains would need to be redistributed to workers hurt both directly and indirectly by globalization and would require measures that go far beyond the Trade Adjustment Assistance Act. With such a grand bargain, both the United States as a whole and all of its citizens would be better off. The short-sightedness of much of the business and policy communities on this matter is self-defeating. ◈

RICHARD KATZ is Editor-in-Chief of the *Oriental Economist Report* and a special correspondent for the *Weekly Toyo Keizai*, a leading Japanese business magazine. He can be reached at <rbkatz@orientaleconomist.com>.

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