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# The Trans-Pacific Partnership: An Overview for Japanese and U.S. Companies involved in Cross-Border Trade

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Since the spring of 2013, representatives of the Japanese government have been negotiating with the United States and nine other governments for passage of a trade agreement between Pacific nations, named the Trans-Pacific Partnership (TPP). TPP is a large scale, multilateral trade agreement that, if passed, would govern a staggering 40 percent of the global economy, totaling \$28 trillion in U.S. dollars, and would regulate roughly one third of all world trade. Indeed, if the TPP is passed, it will cover trade between 700 million people and be the biggest trade agreement since NAFTA. Current negotiations involve the governments of Japan, the United States, Australia, Brunei, Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. While all countries listed are participating in TPP talks, the clear motivator behind passage of the TPP is establishing a trade agreement between Japan and the United States; these two countries represent 80 percent of the GDP in the TPP region combined.

With such major economic players and far-reaching global effects, President Obama is expected to spend the remainder of his presidency working to pass the TPP in the United States. On June 29, 2015, President Obama signed the Trade Promotion Authority (TPA) into law, which gives him "fast track" authority to negotiate the bill and place it before Congress only once, in an up-or-down vote, with a contracted debate period, and without the opportunity to amend. Congress' passage of the TPA signals congressional willingness to consider the fledgling trade agreement in the future. If passed, the TPP will certainly affect how U.S. and Japanese companies do business cross-nationally.

The terms of the TPP have been a closely guarded secret in an attempt to foster open negotiation between the participating

states. However, both Japan and the U.S. have made statements regarding specific terms that they view as key terms for inclusion in the TPP, either through bilateral talks or through statements about the TPP itself. By taking note of these statements, companies in both the U.S. and Japan can prepare themselves to do business under this new trade agreement.

## **Japan–U.S. Bilateral Talks Indicate Changes in the Agricultural and Automotive Sectors**

Before Japan entered trade talks with other TPP nations, the U.S. and Japan engaged in 18 months of bilateral consultations that shaped both nations' involvement in TPP negotiations. Several key, binding concessions came out of these bilateral consultations. For example, as part of its condition of participation in TPP talks, Japan agreed to more than double the number of vehicles eligible for import under its Preferential Handling Procedures. In turn, the U.S. has also agreed to phase out the existing 2.5 percent U.S. tariff on imported cars and 25 percent tariff on trucks entering the U.S. from Japan.

In addition to these concrete, agreed-upon concessions, Japan and the United States have also been engaging in ongoing bilateral talks to address other trade issues between the countries. These talks have operated on a dual-track system with formal TPP negotiations and the results of these talks are expected to be incorporated into the TPP itself. When originally conceived, the talks were designed to address impediments to U.S. investment in the Japanese market, including difficulties with mergers and acquisitions, issues with regulatory transparency, and government procurement/competition problems. As of early 2015, these talks have morphed into determining what market share the U.S. and Japan will have in key protectionist sectors of each nation's economy: agriculture and the auto industry. In agriculture, the U.S. is seeking concessions that would allow the U.S. to sell more farm products to Japan than under current quotas. In return, and in addition to previous concessions made by the U.S. in the automotive sector, Japan seeks to require the U.S. to drop tariffs on the importation of Japanese auto parts.

Outside of the bilateral talks, the U.S. is seeking additional terms applicable to the U.S.-Japan trade in the automotive industry. The Office of the United States Trade Representative has declared that the U.S. is seeking a separate, accelerated dispute settlement procedure applicable to the automotive sector that includes a snap back tariff mechanism as a remedy, as well as commitments from Japan regarding specific automotive regulatory transparency, standards and certifications provided by the Japanese automotive industry.

## **Proposed Dispute Resolution Processes Demonstrate Increased Rights for U.S. and Japanese-Based Companies Trading Abroad**

Based on several leaked drafts and comments by statesmen in both countries, the TPP will most likely contain two dispute resolution processes: a country-to-country dispute resolution process and a company-to-country dispute resolution process. The country-to-country process will apply when one country challenges another for failing to follow a provision set forth in the TPP. This process, which seems to be based on the procedures for country-to-country dispute resolution in the General Agreement on Tariff and Trade, will most likely include review by an independent tribunal and a provision allowing for suspension of concessions when a country fails to maintain compliance with the TPP.

The company-to-country dispute resolution process will grant companies and investors based in a TPP country the right to challenge rules, regulations, government actions and court rulings of other TPP countries. These challenges will take place in either tribunals organized under the World Bank or the United Nations, and companies will have the power to challenge national, state and even local government pronouncements. This sort of dispute resolution mechanism is not new – similar provisions appear in 51 other trade provisions wherein the U.S. is a partner. But the TPP's company-to-country dispute resolution provision may have a radical effect on the administration of international law simply because of the number of multinational companies headquartered in Japan and the

U.S. Because these companies have the resources to use these mechanisms against any given TPP state, analysts predict that more company-to-state challenges will be filed under the TPP than under previous trade agreements.

## **Planning to Do Business Under the TPP: The Takeaway for Japanese and U.S. Companies Involved in Cross-Border Trade**

It appears that restrictions on agriculture and automotives will be lifted if the TPP is passed by Japan and the U.S. All that remains to be seen is how far the TPP will liberalize agricultural and automotives trade between these two countries. Businesses in both Japan and the U.S. stand to gain from relaxed trade barriers on both sides of the border. Additionally, these businesses may also take advantage of new dispute resolution processes tailored specifically towards addressing concerns that they have regarding each nation's policies on trade. In order to maximize possible benefits under the TPP, businesses in both the U.S. and Japan should consult with counsel and tax advisors about the impact that TPP may have on its business and determine what internal business decisions need to be made in preparation for the passage of TPP.

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