

# ISSUE BRIEF

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## The Trans-Pacific Partnership: Questions that Congress Must Answer

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On November 5, text of the proposed Trans-Pacific Partnership (TPP) agreement between the United States and 11 other countries was made public.<sup>1</sup>

That text, including tariff-cut schedules and annexes, is thousands of pages long. The agreement took seven years to negotiate, and it will take time to provide a comprehensive analysis of its potential impact. The most important consideration is whether the agreement increases economic freedom and opportunity.

### Impact on U.S. Prosperity

Countries with low trade barriers are more prosperous than those that restrict trade. It is for this reason that The Heritage Foundation has always been a strong supporter of free trade. Countries that lower or eliminate their barriers to trade and investment benefit from inflows of resources and technology from around the world, and they gain access to the most competitively priced goods and services available. The result is faster growth, more jobs, and better and more varied products.

The 12 countries engaged in the TPP process have agreed to reduce thousands of individual tariffs and non-tariff barriers to trade. They have insisted on maintaining others. The countries that have made

the deepest cuts will enjoy the most benefits from the agreement. Those that have retained protectionist measures will find their benefits muted.

### Impact on Individual Freedom

The free-market system, which emphasizes voluntary commercial interactions among individuals and organizations, promotes win-win solutions. It is important to remember that it is not countries per se that trade with one another; it is individuals. The United States does not trade with Canada, for example. Instead, millions of American individuals and companies trade with millions of Canadian individuals and firms. There is not one trade relationship across the U.S.–Canada border; there are millions. Individual buyers and sellers agree to a cross-border transaction when it benefits them both.

The essence of a good trade agreement, really the only criterion by which it should be judged, is whether it makes it easier for individuals to engage in commercial transactions with people from other countries. Good trade agreements promote Americans' individual sovereignty by making it difficult for governments to maintain special-interest barriers against trade and investment that promote the interests of a few by restricting the activities of others.

There are many potential areas of concern. The TPP text's 30 chapters contain a wide variety of provisions regulating various aspects of international commerce, ranging from specific sectors, such as agriculture, telecommunications, and the Internet, to more general concepts, such as sanitary regulations, competitiveness, or the movement of workers. In many of these chapters, the TPP agreement restricts the most odious forms

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This paper, in its entirety, can be found at <http://report.heritage.org/ib4484>

of regulation while legitimizing more modest but sometimes quite rigorous forms of market management. Each of these chapters will require the most careful scrutiny by Congress to determine its actual impact on trade. For those who believe in the free market, concerns about regulatory overreach must be front and center.

### Specific Areas of Concern

In addition to these general concerns, Congress will have to obtain answers to a number of specific questions, including:

- **State-owned enterprises.** Will the agreement reduce the harmful impact of state-owned companies in TPP countries?
- **Telecommunications and e-commerce.** Will benefits resulting from reductions in barriers to international e-commerce be offset by the potential imposition of regulations in areas such as net neutrality?<sup>2</sup>
- **Intellectual property.** How will Americans be affected by provisions relating to data protection, copyright provisions, and other intellectual property issues?
- **Labor.** It is not clear that Congress intended for the Obama Administration to negotiate a “trade” agreement that includes provisions<sup>3</sup> on minimum wages, too. Has the Administration overstepped the provisions of Trade Promotion Authority (TPA) by including language pertaining to minimum wage rules?
- **The environment.** The agreement commits parties to implement environmental agreements, and also to cooperate in developing “low emission economies.” Will the agreement’s Environment Committee infringe on U.S. sovereignty in dealing with controversial issues, such as climate change?
- **Regulatory issues.** Will the agreement promote good practices for regulations and reduce non-tariff trade barriers without leading to international regulatory impediments to commerce? Are the provisions on regulatory coherence an invitation to impose other countries’ standards and regulatory approaches on the United States?
- **Immigration.** Does the agreement have any impact on immigration policy?
- **Corporate social responsibility.** This international movement to encourage or even require companies to invest their shareholders’ resources in social projects that may be remote from their core business interests is endorsed in several places in the text. How does the Administration intend to operationalize this concept, if at all?
- **Agriculture.** How will the agreement reduce harmful agricultural trade barriers, and what is the impact of allowing some protectionist schemes to remain in place?
- **Dispute resolution.** How will the details of new dispute-resolution guidelines affect administration of the agreement?
- **Exceptions.** To what extent will exceptions to reductions in tariff and non-tariff barriers—including tariff cuts, government procurement laws, and state-owned enterprises—undermine the agreement’s potential benefits?

### Conclusion

Americans will likely have many months to investigate and debate the TPP. Under TPA guidelines, changes to the law needed to implement trade agreements are subject to a majority vote by both Houses of Congress without amendment. But Congress

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1. Office of the United States Trade Representative, “TPP Full Text,” November 5, 2015, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/TPP-Full-Text> (accessed November 12, 2015).

2. James L. Gattuso et al., “Saving Internet Freedom,” Heritage Foundation *Special Report* No. 168, June 3, 2015, <http://www.heritage.org/research/reports/2015/06/saving-internet-freedom>.

3. Office of the United States Trade Representative, “TPP Final Text: Chapter 19–Labour [sic],” <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour.pdf> (accessed November 12, 2015).

could also consider TPP-implementing legislation under the same procedures it uses for most other bills. For example, according to the House Ways and Means Committee: “TPA sets up mechanisms for Congress to turn off the expedited procedures if the administration fails to meet its TPA obligations.”<sup>4</sup>

The United States already has individual free trade agreements with six of the 11 TPP partners. Reducing barriers to trade and investment with the remaining countries, including Japan, has potential benefits. Congress must weigh such benefits against the aspects of the agreement that have the potential to reduce economic freedom.

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4. House Committee on Ways and Means, “Trade,” <http://waysandmeans.house.gov/subcommittee/trade/> (accessed November 12, 2015).