VIII. From the P4 Agreement to the Trans-Pacific Partnership: Explaining expansion interests in the Asia-Pacific region

By Deborah Elms*

Introduction

This chapter investigates two puzzling issues in the possible evolution of the P4 Free Trade Agreement (FTA) with Singapore, New Zealand, Chile and Brunei Darussalam into a Trans-Pacific Partnership (TPP) trade agreement with the possible addition of the United States, Australia, Peru and Viet Nam (at least as an observer). First, what prompted a set of small, largely open economies that have very little trade with one another to launch free trade negotiations in the first place? Trade negotiations consume scarce resources, particularly in small countries with limited bureaucratic staff resources. The Trans-Pacific Strategic Economic Partnership Agreement (TPSEP, more commonly known as the P4 Agreement) talks ran to more than five rounds (with additional negotiations on financial services and investment scheduled for completion after the original agreement had been finished). Ultimately, as outlined briefly in this chapter, the economic gains from greater liberalization in the P4 Agreement have been minimal and are likely to remain small.

Second, given the minimal gains accruing to the original P4 member States, what has prompted other countries such as Australia and the United States to express an interest in joining this agreement? If the P4 Agreement were a “high-quality” preferential trade agreement, joining might make sense. However, as Gao and Capling argue in their respective chapters in this publication, the case for including the P4 in the list of agreements of a higher standard is, at best, rather weak. There are theoretical reasons for thinking that States are pushed into enlarging FTAs to avoid potential trade diversion caused by overlapping and inconsistent bilateral agreements; however, as persuasively demonstrated in the chapter by Ravenhill, this logic does not appear to hold in this case.

Instead, the answer might come from economic incentives. Although the potential gains from trade in these cases are modest, perhaps business groups have been actively pushing for expansion. After all, an FTA is about liberalizing trade leading to greater economic gains. As this chapter shows, the business case for expansion has been quite muted. Most of the preferred deals have already been reached through a dense web of overlapping bilateral agreements between most of the potential member States.

So what accounts for the flurry of interest in the P4 Agreement and TPP talks? It is argued in this chapter that there are two key factors: (a) the political importance of an agreement that ties States together across the Asia-Pacific region (keeping most of the

* This chapter is based on a paper written by the author in November 2009.
potential participants firmly linked into Asia); and (b) the possibility for economic gains at some point in the future if the TPP gains momentum and expands further.

Officials can certainly approve trade agreements for political reasons, but it is important to recall that the agreements have economic consequences. Some of the potentially contentious areas in any negotiations are highlighted in this chapter. If the TPP were only being considered with regard to the seven or eight States currently involved, most of the economic fights would likely be modest. However, this agreement is intended to be a model for the future. It will need to both accommodate and entice participation by other States. This will certainly complicate TPP negotiations.

A. P4 Agreement background

Negotiations were launched at the Asia-Pacific Economic Cooperation (APEC) Leaders Summit in 2002 when the leaders of Singapore, New Zealand and Chile announced their intentions to create a preferential trade arrangement.1 Officials held four rounds of negotiations on the Pacific Three Closer Economic Partnership between 2003 and 2005. At the fifth meeting of the interested parties in April 2005, Brunei Darussalam joined negotiations with the intention of becoming a founding member State of the agreement.2 The successful conclusion of the P4 Agreement talks was announced at the APEC Trade Ministers meeting in June 2005. The 20 chapters in the Agreement were accompanied by two Memoranda of Understanding (MOUs) on environmental and labour cooperation.3 The Agreement came into force in 2006.

At the outset of negotiations, officials at the Ministry of Foreign Affairs and Trade in New Zealand announced three primary objectives for the talks:

(a) “Concluding a high-quality, comprehensive agreement that will contribute to liberalization and cooperation within the Asia-Pacific region and support trade liberalization through WTO;
(b) Making Pacific Three (P3) a business-friendly agreement that provides an enabling framework for development of commercial and broader linkages; and

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1 The idea of such a trade arrangement, however, dates back even earlier, to the mid-1990s. At several APEC meetings in the 1990s, Australia, Chile, New Zealand, Singapore, and the United States held informal “P5” discussions. The United States and Australia did not share the same level of enthusiasm for launching official talks at the time, so the other three members moved ahead on their own in 2002. Interview with New Zealand officials, Wellington, October 2009.

2 Brunei Darussalam became a member on 12 July 2006, when the agreement came into force, although the late entry into negotiations meant that country was not subject to all the original deadlines imposed on the other three member States in the agreement. Instead, it was granted longer implementation periods. The market in Brunei Darussalam was also considerably less open than the markets of the other three States. Brunei Darussalam also had additional negotiations on government procurement and trade in services, as neither of these commitments had been concluded at the time the P4 Agreement was completed.

3 Although the environmental and labour agreements were announced as separate documents, any State wishing to exit any one of the three agreements automatically results in the exit of the other two.
(c) Ensuring that P3 reflects New Zealand’s overall public policy and social objectives.\textsuperscript{4}

These objectives were nearly identical to the objectives expressed in Singapore and Chile on the launch of the talks. Singapore had been interested for some time in establishing a true free trade area in Asia as either part of the 10-member Association of Southeast Asian Nations (ASEAN) process or through the 21 members of APEC. The P4 Agreement was explicitly negotiated from the beginning with an eye to having an accession clause included to provide other States with the opportunity to join in the future. This was viewed, in part, as a “back door means” of getting to a larger trade agreement with the willing members of a larger coalition of States. The bargaining over a Free Trade Area of the Asia-Pacific (FTAAP) in APEC was stalled.

Negotiating with an enthusiastic group of economies on further liberalization was viewed as a much more viable strategy towards a broader trade area than engaging in endless – and likely fruitless – negotiations with some APEC member economies who were proving unwilling to open any further in a meaningful way. It also provided another avenue for trade liberalization, given the difficulties of concluding the Doha Round negotiations in WTO.\textsuperscript{5}

Focusing on these broader objectives meant that Singapore and New Zealand in particular could overlook the extremely modest economic outcomes of the original P4 deal. The agreement is broadly comprehensive and viewed as “high quality.”\textsuperscript{6} It includes liberalization of all tariff lines for Chile, New Zealand and Singapore, and 99 per cent for Brunei Darussalam (phased in over time).\textsuperscript{7} The services chapter contains a negative list – broadly viewed as more trade liberalizing than the alternative formulations in other FTAs. Additional chapters include sanitary and phytosanitary standards (SPS), technical barriers to trade, competition policy, intellectual property rights, government procurement and dispute settlement. It contains some labour and environmental provisions in a separate MOU. Two chapters on financial services and investment were to be completed within two years of the


\textsuperscript{5} This is not to say, however, that any of the States involved in the P4 Agreement or the TPP have abandoned the multilateral approach to trade liberalization. Governments in all States have made strong efforts to confirm that the conclusion of the Doha Round remains their chief priority. It is also clear that many view the P4 Agreement (and TPP) as a fall-back option, should the multilateral trading system continue to struggle in the future to produce new gains from trade.

\textsuperscript{6} The extent to which this is really true is debatable as the chapters by Gao and Capling in this publication make clear. Nonetheless, this is the rhetoric most frequently employed to describe this FTA agreement.

\textsuperscript{7} The exceptions for Brunei Darussalam include alcohol and tobacco products, which are excluded on health and religious grounds.
agreement. Critically, and unusually, the document also included an accession clause to allow other economies to join the agreement in the future.8

The anticipated gains from trade as a result of the P4 Agreement were expected to be modest.9 When the agreement came into force in 2006, Brunei Darussalam’s total imports and exports of merchandise trade in goods to other P4 partners amounted to US$ 299 million and US$ 417 million, representing 17.9 per cent of total imports and 5.5 per cent of total exports.10 Chile’s imports from, and exports to, P4 partners were worth US$ 71 million and US$ 77 million, respectively, representing 0.2 per cent of total imports and 0.1 per cent of all exports.11 New Zealand imported US$ 1.5 billion and exported US$ 452 million to P4 members, which represented a 5.7 per cent share of total imports and a 2 per cent share of total exports.12 Singapore’s imports from, and exports to, P4 partners amounted to US$ 731 million and US$ 2 billion, respectively, representing a 0.3 per cent share of total imports and a 0.7 per cent share of total exports.13

By the time the scheduled elimination of tariffs comes into force, however, there may still be some gains from trade, as each member will receive a margin of preference off MFN rates that could be quite substantial.14 Importantly, many of these gains will come in the categories of the top 25 exports for each country. For example, Brunei Darussalam currently faces duty on 59 tariff lines from Chile across its top 25 export categories. By 2015, all 59 tariff lines will be duty-free.

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8 The Agreement is open to any APEC economy or any other State (Article 20.6), subject to terms to be agreed among the Parties.
9 In fact, one Member of Parliament in New Zealand, John Hayes, said “it will make not the slightest bit of difference to anybody – and it will make no practical difference to the people in my electorate. But it is a good idea.” See the Debates in Parliament, “Free-trade Agreement – New Zealand-United States,” 23 September 2008.
10 “Factual presentation, Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore (Goods and Services)”, WTO Secretariat, 9 May 2008, WT/REG229/1 (hereafter, “WTO Factual Presentation”). All figures are in United States dollars. Brunei Darussalam has limited services trade with its P4 partners, but was granted two additional years to complete its services schedule after the agreement came into force (because of that country’s late entry into negotiations).
11 WTO Factual Presentation.
12 Ibid.
13 Ibid. Singapore’s services trade with its partners averaged US$ 136.5 million in imports and US$ 435.5 million in exports.
14 See Annex 1, WTO Factual Presentation, pp. 61-68. The amount is still small. New Zealand, for example, already had duty-free access to Singapore prior to signing the P4 Agreement. In 2004, New Zealand paid a total of $NZ 2.2 million in duty to Chile (mostly on coal exports) and $NZ 50,000 in duty to Brunei Darussalam. The Government of New Zealand estimated it would lose $NZ 320,000 a year in tariff revenue from Chile and $NZ 1,800 a year on imports from Brunei Darussalam. See “Trans-Pacific Strategic Economic Partnership Agreement: National Interest Analysis,” New Zealand Ministry of Foreign Affairs and Trade, 6 and 10 July 2005.
Even off a very modest base, the potential is there for economic gains from trade among the members, especially for certain firms and sectors. New Zealand noted that while dairy exports to Chile were generally subjected to a low, six per cent tariff prior to the P4 Agreement, this still placed their exporters at a disadvantage relative to exporters from the United States, European Union and Mercosur. The others were all covered under different FTAs with Chile, with tariffs closer to (or at) zero. The reduction in tariffs could help small and medium-sized exporters find a market in Chile.\(^\text{15}\)

Officials in Brunei Darussalam used the P4 Agreement, in part, to catalyse changes in the domestic economy. For example, developing and enforcing comprehensive changes in domestic legislation for intellectual property rights had not been viewed as a priority before Brunei Darussalam signed on for the P4 talks.\(^\text{16}\)

The P4 Agreement came into force with very little fanfare. The two States with the most trade between them – New Zealand and Singapore – already had an FTA pact (ANZSCEP) in place. Part of the P4 talks included the understanding that businesses in these two States could opt to use either the P4 terms of reference in seeking market access or the FTA deal, as outlined in a side letter with the P4 Agreement. Firms could opt for whichever arrangement provides them with the most benefits.\(^\text{17}\) This included the ability to use the positive list for services (NZSCEP) or the negative list (P4) as well as differing rules of origin calculations in each agreement. Using both agreements instead of allowing one to supersede the other, argued New Zealand, would give greater flexibility to traders.\(^\text{18}\)

This clause undermined the argument that the P4 Agreement provided a means for “untangling the spaghetti bowl” of overlapping FTA deals. It does not rationalize the existing agreements or streamline the rules into one comprehensive package spread across more partners. Instead, it adds another layer of “pasta”.

### B. American announcement

In September 2008, the Office of the United States Trade Representative (USTR) of the outgoing George W. Bush Administration announced that the United States would seek participation in the P4 Agreement. USTR Susan Schwab said: “This high-standard regional agreement will enhance the competitiveness of the countries that are part of it and help [to]

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\(^{16}\) Interview with officials, Geneva, 1 October 2009.

\(^{17}\) However, some trade remedy provisions in the New Zealand-Singapore Closer Economic Partnership prevail over the P4 Agreement (paragraphs 63 and 66). Since neither New Zealand nor Singapore tracks which agreement importers are using when claiming tariff preferences, it is not possible to say which agreement provides greater benefits for business.

\(^{18}\) See the report to WTO members on the P4 Agreement, “Consideration of the Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, Goods and Services, WTO, 18-19 September 2008, WT/REG229/M/1/Rev.1, p. 3.
promote and facilitate trade and investment among them, increasing their economic growth and development.”

New Zealand’s Trade Minister Phil Goff greeted the statement warmly, saying that: “Securing an FTA negotiation with the United States, the world’s largest economy, has been a key trade objective for more than decade.” However, his enthusiasm was not equally shared. One Chilean trade official complained that, with an FTA already in place with the United States, he could only expect greater, politically and perhaps economically difficult, demands from the Americans in a TPP. Brunei Darussalam expressed similar concerns about upcoming demands, particularly in areas such as labour or the environment where their trade officials have had limited experience in negotiations.

The official press release for the American statement of participation noted that “ultimately, the objective is to expand the membership of the Agreement to other nations that share our vision of free and fair trade.” This had the effect that officials were hoping for, as Australia and Peru quickly announced their interest in joining the talks. Viet Nam asked for observer status. Other States, including Japan, also suggested a willingness to consider joining the talks in the future.

The P4 Agreement had become the P7 or the Trans-Pacific Partnership (TPP) talks. The United States immediately joined in the negotiations on the two missing chapters on financial services and investment. Initial talks with potential TPP member States were scheduled for March 2009. However, the talks were postponed, pending a broader trade policy review within the United States under the new Obama Administration. New USTR Ron Kirk announced that the United States would “pick up” the TPP talks at a minimum in May 2009.

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20 Remarks at the P4 Trade Minister’s Meeting in New York, Nevil Gibson, “Goff Welcomes US FTA Negotiations,” National Business Review – New Zealand, 23 September 2008. However, not everyone was so enthusiastic. The New Zealand “Not for Sale” Campaign urged members to post letters to their MP in opposition.
21 Interview with officials, Geneva, 1 October 2009. Sensitive issues will likely include intellectual property, financial services and investment. Financial services negotiations were already difficult in the United States-Chile FTA talks, and more recent United States FTA agreements have had even greater market access provisions included. Given that Chile views its financial services commitments as important regulatory instruments, it is unenthusiastic about greater market opening that would dilute its ability to regulate the industry properly.
22 Interview with officials, Geneva, 2 October 2009. The same officials noted the struggles within Brunei Darussalam to fully implement existing agreements, given the capacity problems in the trade ministry and elsewhere.
24 Three rounds of negotiations were held in 2008 without being completed.
The initial TPP talks have not been rescheduled during the remainder of 2009. The United States trade policy review has also not been publically released at the time of writing this chapter. The White House has suggested that a major presidential speech on trade is forthcoming, which will address the topics covered in the review.\textsuperscript{26} Of greatest interest is some clearer understanding of what needs to happen in the Doha negotiations in Geneva at the WTO for the United States to close the deal;\textsuperscript{27} resolution of the pending FTA agreements waiting for submission to Congress for ratification (Panama, Columbia and the Republic of Korea), and some indication of future directions on trade pacts such as the TPP.

One critical reason for the United States to support the TPP can be found in USTR documents such as the President's 2008 Annual Report on the Trade Agreements Programme. It says, in part, that “United States' participation in the TPP could position United States businesses better to compete in the Asia-Pacific region, which is seeing the proliferation of preferential trade agreements among United States competitors and the development of several competing regional economic integration initiatives that exclude the United States.”\textsuperscript{28}

If Asian economies are going to create some sort of free trade area, the Americans would rather be in than out. As Senator Charles Grassley said: “If we want to have any influence over that process, we need to get involved. We can’t advance our economic interests if we’re not at the table.”\textsuperscript{29} The United States has viewed trade talks with various Asian-only partners with a wary eye. This includes the various permutations of ASEAN+ agreements (either +3 or +6).\textsuperscript{30} Instead, the United States has traditionally pushed for trade liberalization in this region through the APEC process.

Getting into the TPP early makes sense. Although the P4 Agreement was designed to allow other States to join the agreement, the entire agreement cannot be renegotiated for each new member State. At a certain point, the agreement will have to be closed for new membership, after which economies could still elect to accede, but they would have to

\textsuperscript{26} The latest information is that the review has been postponed until the health-care debate in the United States is resolved. The speech may be scheduled in October. See \textit{Inside U.S. Trade}, 4 September 2009.

\textsuperscript{27} One senior United States trade official in Geneva argued that sufficient information had already been conveyed to negotiators about the necessary parameters of a Doha Round deal. Interviews in Geneva, 2 October 2009.


\textsuperscript{30} ASEAN includes Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. The ASEAN+3 grouping comprises the 10 ASEAN members plus China, Japan and the Republic of Korea. The ASEAN+6 is all of the above plus India, Australia and New Zealand. Notably, from the American position, none of these arrangements includes the United States.
accept the deal on the table as given (subject, presumably, to minor modifications and certain conditions for entry).  

Because the United States already had bilateral FTAs with Singapore and Chile that entered into force on 1 January 2004, (and because the P4 Agreement was based, in part, on the template provided by those deals), it is assumed that negotiations on a wider expansion of the agreement should be easier for the United States. After all, the template of the P4 Agreement already included most of the specific items of interest to the United States, including services, investment, intellectual property, labour and the environment. These same chapters are included in the bilaterals between the United States and Australia, and the United States and Peru, which came into force on 1 January 2005 and 1 February 2009, respectively.

Many of the provisions in the existing FTAs were carefully crafted compromises, offering a balance of benefits, opportunities and pain to the economic interests in each member State. Under an expanded TPP, even if the original FTA arrangements remain in place, some of these previous agreements will be altered or even undermined. The same favourable deal struck with one State in an FTA may not be extendable to the larger membership. This could unravel the partnerships in place in some States from previous deals (and, instead, setting up new potential coalitions).

C. Existing FTA arrangements

The markets for most of the provisional TPP States were not large, from the perspective of the United States. Nonetheless, bilateral trade did increase in the wake of the various FTA agreements. For example, American-Australian trade expanded after the signing of the FTA in 2005. Trade in goods in 2008 was US$ 33.9 billion, up 56 per cent from 2004. Trade in services was US$ 16.3 billion in 2007, after an increase of nearly 50 per cent from 2004. By 2008, Australia was the fourteenth largest export market for United States goods.

In 2008, two-way trade between the United States and Chile equalled US$ 20.3 billion with United States exports to Chile slightly more than imports. By 2008, Singapore had become the sixteenth largest trading partner for the United States, with two-way trade of US$ 44.7 billion and US$ 11.1 billion, respectively, in services. Two-way trade with Peru amounted to US$ 12.5 billion in 2008. This figure was expected to rise in the wake of the United States-Peru Trade Promotion Agreement (PTPA) that entered into force on

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31 In this regard, it would not be unlike new members joining WTO. Each time a new State joins WTO, it does not renegotiate all the previously existing commitments, but instead negotiates the specific terms of admission for itself.
32 Bilateral and Regional Negotiations and Agreements, USTR, 2009 Report, p. 111.
33 Ibid., p. 112.
34 Ibid., p. 113. Services figures are for 2007.
35 Bilateral and Regional Negotiations and Agreements, USTR, 2009 Report, p. 120.
1 February 2009. The PTPA agreement immediately eliminated tariffs on 80 per cent of United States exports, with the remaining tariffs to be phased out gradually.

There is currently no FTA in place between the United States and New Zealand. Trade between the two States is limited, with total trade in goods standing at US$ 5.7 billion in 2008 and services at US$ 3.2 billion in 2007. Brunei Darussalam is a tiny market for the United States, ranked at 139 in goods trade worth US$ 226 million in two-way trade in 2008. The National Association of Manufacturers noted that the United States exported US$ 108 million in manufactured goods in 2008.

D. American business interests in the TPP

If the United States already had bilateral trade agreements with most of the States in the emerging TPP agreement, why expend additional resources in negotiating a larger deal? The bulk of American trade with presumptive partners was already covered under the existing arrangements. While it is possible that a TPP arrangement might be expanded at some point into a larger FTAAP among the 21 member economies of APEC (which would certainly have real economic benefits for the United States), it is equally plausible that it will not. The TPP might become one more trade deal with seven members in an increasingly complex set of overlapping rules governing American trade with its partners.

In addition, trade deals do have “real world” economic consequences. While it might be tempting for trade officials to talk of broader strategic objectives and interests, many of the rules hammered out over an international negotiating table will affect business decisions at home and abroad. If the TPP never turns into an FTAAP in the future, what are the likely economic incentives for American firms to support or oppose the initiative?

It should be noted at the outset that American business has not been out in front of government on this issue. Business lobby groups do not appear to have agitated for participation in the TPP process prior to the announcement of United States participation by the Government. Nor, as indicated below, has business interest in joining the TPP talks been particularly strong. This evidence casts doubt on Richard Baldwin’s arguments about

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36 Ibid., p. 147.
38 Testimony of Franklin Vargo, National Association of Manufacturers, 4 March 2009.
39 In manufactured goods, for example, 96 per cent of United States exports were already covered by existing agreements with Australia, Chile, Peru and Singapore. Trade with Brunei Darussalam and New Zealand accounted for US$ 108 million and US$ 2.3 billion, respectively. See Testimony of Franklin Vargo, National Association of Manufacturers, 4 March 2009.
the forces that propel a multilateralisation of existing FTAs, just as suggested in Ravenhill’s chapter of this publication.41

The Trade Policy Staff Committee in the United States Congress held the first public hearings on the proposed TPP talks on 4 March 2009. This was the first opportunity for industry groups to weigh in on the planned talks.42 The public statements were important, as they revealed the presumptive lines of arguments that would be used once the official talks get underway. They also highlighted the sources of disagreement.

The United States Chamber of Commerce argued that, while the new export opportunities in the seven partners of the TPP were relatively modest, the combined trading bloc made an important “geostategic group.” In addition, any effort to expand to additional partners in the future could reach into economically significant markets that were previously closed through bilateral negotiations.43 Several commentators spoke of a loss of United States market share to competitors due to overlapping preferential trade deals that excluded the United States.44 This trade diversion problem seems more hypothetical than real, but the sentiment remains strong.

41 Baldwin, in brief, argued that as businesses found themselves disadvantaged by the growing number of bilateral FTAs, they would begin to agitate for more FTAs and, particularly, for expanding the membership in FTAs. See Baldwin, 2006, “Multilateralising regionalism: Spaghetti bowls as building blocs on the path to global free trade,” World Economy, vol. 29; pp. 1451-1518. For an emphatic response, see Ravenhill, “Extending the TPP: The political economy of multilateralization in Asia,” ARTNeT conference, Bangkok, 2 November 2009.

42 Groups testifying or supplying messages of support included: the United States Chamber of Commerce; National Foreign Trade Council; National Council of Textile Organizations (if Viet Nam is removed from TPP list); Pharmaceutical Research and Manufacturers of America; International Intellectual Property Alliance; Coalition of Service Industries; National Association of Manufacturers; the United States-New Zealand Council; Emergency Committee for American Trade; New Zealand-United States Council; Biotechnology Industry Association; Grocery Manufacturers Association; National Pork Producers; Land O’Lakes Farmers Coop; Motion Picture Association of America; CropLife America; Northwest Horticulture Council; TechAmerica; National Retail Federation; Boeing; Novartis Corporation; Wal-Mart; Distilled Spirits Council of the United States; California Table Grape Commission; Advanced Medical Technology Association; National Electrical Manufacturers Association; National Confectioners Association; United States Association of Importers of Textiles and Apparel; and the American Chamber of Commerce in Japan. Several commodity groups and agribusiness organizations, including the National Association of Wheat Growers, the National Association of Barley Growers and the American Soybean Association, sent a letter of support to President Obama in March 2009. See Inside U.S. Trade, 10 April 2009. Opposing testimony or letters included: the American Manufacturing Trade Action Coalition; National Milk Producers Federation; Rubber and Plastic Footwear Manufacturers Association; Public Citizen; American Sugar Alliance; and United States Dairy Export Council.


44 See, for example, the testimony by Chuck Dittrich, National Foreign Trade Council, 4 March 2008, or the submission by the National Pork Producers highlighting the tariff disadvantage faced by United States pork exporters relative to competitors in markets such as New Zealand, where imports from Canada, Australia and China had duty-free access, while the United States was subject to a 5 per cent MFN tariff. See letter of support to USTR from National Pork Producers, March 2009.
The AFL-CIO asked the USTR to provide more economic reasons for engaging in TPP negotiations, noting that most of the explanations provided for American involvement in the deal were rooted in political considerations.\textsuperscript{45} It also asked for a greater explanation of the possible benefits to be obtained from the three partners without a current FTA in place to govern trade. New Zealand, it noted, was already substantially open for trade, while Brunei Darussalam represented almost no market of any kind (beyond limited trade in oil and oil-related equipment), and most of what the United States wanted from Viet Nam was incorporated into the latter country’s recent WTO accession package. Others, including officials at USDA and the American Farm Bureau Federation, questioned the economic value of a TPP for agriculture.\textsuperscript{46}

**E. American industry: Points of concern**

Various industry and lobby groups made specific recommendations for tariff reductions with each of the potential partners in the TPP. Many of them discussed problems with customs clearance for goods in particular cases. In addition to tariff and customs issues, industry argued that policymakers should ensure the following seven areas were included in any final agreement.

1. **Services\textsuperscript{47}**

The Coalition of Service Industries noted that service imports by TPP member countries amounted to US$ 134 billion in 2007 and almost the same amount in service exports. American exports of services to TPP countries in 2007 totalled US$ 20.7 billion, which exceeded those to China.\textsuperscript{48} Various industry groups mentioned barriers to trade in services and expressed strong support for trade liberalization across substantially all service sectors. Several urged the United States to use a negative list approach to negotiations.\textsuperscript{49}

\textsuperscript{45} Testimony filed by the American Federation of Labour and the Congress of Industrial Organizations, 25 February 2009.

\textsuperscript{46} *Inside U.S. Trade*, 20 March 2008 and 26 September 2008. The American Farm Bureau argued that it could support the TPP only if it: (a) included all areas, eliminated non-tariff barriers; (b) did not have an impact on previously existing FTAs; and (c) included States with significantly larger markets. See the Bureau’s submission to USTR, 11 March 2009. The Wine Institute, the California Association of Wine Grape Growers (CAWG) and Wine America argued they could only support the TPP if the USTR could guarantee that: (a) existing FTAs’ provisions for wine and grape juice concentrate would not be changed; (b) the phase-out schedule for United States imports of New Zealand wine and grape juice concentrate should be the longest possible; and (c) the tariff elimination should be immediate for wine and grape juice concentrate to Brunei Darussalam and Viet Nam. See the submission by JBClawson International on their behalf, 10 March 2009.

\textsuperscript{47} Services were specifically mentioned by the United States Chamber of Commerce, National Foreign Trade Council, National Electrical Manufacturers Association and Coalition of Service Industries.

\textsuperscript{48} Testimony by John Goyer, Coalition of Service Industries, 4 March 2009.

\textsuperscript{49} These include the United States Chamber of Commerce, and the Coalition of Service Industries.
Industries singled out for particular attention included: financial services, telecommunications, audio/visual services, the media, electronic payment systems, e-commerce, energy services and express delivery services.

2. Intellectual property rights and enforcement

The primary concerns are enforcement of intellectual property rights (IPR) as well as lax legal protections. Brunei Darussalam, Chile, Peru and Viet Nam have been on the United States’ Special 301 watch list for problems with IPR protections in the past. Several industry officials urged the USTR to ensure that the TPP conform to the latest United States FTA chapters, as these could serve as a better template than earlier models. This was especially important for those member countries without a bilateral FTA in place. The Grocery Manufacturers Association urged that attention be given to trademark protection for branded food products. The International Intellectual Property Alliance argued that IPR protections and enforcement mechanisms with Viet Nam alone might make the entire agreement worthwhile for United States industry.

3. Standards and other technical barriers to trade

The main complaint under this category has been a lack of transparency regarding standards and other processes. Two potential models mentioned as templates are the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) or the United States-Peru FTA. Both of these agreements contained robust chapters on intellectual property.

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50 Public Citizen noted the potential problems of negotiations on greater liberalization in financial services in the wake of the greatest financial crisis since the 1930s. See Testimony filed by Public Citizen, 4 March 2009.

51 Intellectual property rights were specifically mentioned by the Motion Picture Association of America, United States Chamber of Commerce, National Foreign Trade Council, Pharmaceutical Research and Manufacturers of America, International Intellectual Property Alliance, Coalition of Service Industries, National Association of Manufacturers, Consumer Electronics Industry, Grocery Manufacturers Association, CropLife America, TechAmerica, Advanced Medical Technology Association, Novartis Corporation and the Biotechnology Industry Association.

52 New Zealand is currently not a member of the World Intellectual Property Organization’s Performances and Phonograms Treaty. The country was also cited in the 2008 U.S. Foreign Trade Barriers Report for problems in its Copyrights Amendments Bill.

53 Grocery Manufacturers Association submission, 11 March 2009.


The United States Dairy Export Council noted that many of the discussions on non-tariff barriers (NTBs) and SPS barriers to trade were insufficiently resolved during the negotiations over previous FTAs. This has meant additional complications at the implementation phase of the agreements. In any complex TPP talks, particularly in drafting a model text to be used for future entrants, many of these issues must be fully addressed in the negotiations before signing the agreement and not simply left to be resolved after the fact.

The Grocery Manufacturers Association highlighted the importance of negotiations with Viet Nam over standards, in particular, and welcomed the possibility of a more science-based approach to SPS.

4. Investment and investor protection

Various groups specifically mentioned the need for strong investor protection, transparent mechanisms for resolving investor-State disputes and adequate enforcement provisions.

5. Government procurement

New Zealand and Brunei Darussalam are not members of the plurilateral WTO Government Procurement Agreement (Chile is an observer). This, argued several industry officials, meant it was particularly important to include strong government procurement provisions in the TPP negotiations. New Zealand also has some specific provisions in procurement for native peoples that could cause difficulties in bargaining. One specific area of concern might be New Zealand’s national formulary for medicines used in the Government’s national health services.

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56 Testimony provided by United States Dairy Export Council, 10 March 2009.
58 Investment issues were covered extensively by the Coalition of Service Industries as well as by National Association of Manufacturers, Advanced Medical Technology Association and the Motion Picture Association of America.
59 Transparency in government procurement was specifically mentioned by the National Foreign Trade Council, TechAmerica, Telecommunications Industry Association, National Electrical Manufacturers Association and the AFL-CIO.
60 However, the United States managed to negotiate with Malaysia and South Africa on FTA agreements, despite special procurement provisions aimed at ethnic Malays or black South Africans.
61 A similar system caused problems in the United States-Australian FTA negotiations. The submission by the Advanced Medical Technology Association specifically mentioned this problem. See testimony of 11 March 2009. See also the submission by Novartis Corporation on 3 March 2009.
6. Rules of origin

The National Council of Textile Organizations noted that rules of origin (ROO) for yarn varied across different FTAs. This is likely to be a similar problem for a host of products. It is not yet clear whether the TPP will supersede and replace existing agreements or exist alongside various bilateral agreements, allowing industry to pick and choose ROO criteria. If the experience of Singapore and New Zealand is any guide, there will ultimately be overlapping agreements. Businesses in both member countries of a bilateral FTA can opt for ROO contained in either the P4 Agreement or the FTA.

The National Association of Manufacturers explicitly offered its support on the condition that existing FTA agreements would be allowed to remain in force as, it argued, its supporters should not be worse off as a result of the TPP negotiations. The American Sugar Industry insisted that all previous concessions remain intact, without being subject to any further modifications.

The United States Dairy Export Council said it would push hard to ensure that ROO for dairy products would be country-specific, in order to prevent such products from being trans-shipped through various TPP member States to the United States as the ultimate destination.

7. Labour and the environment

Labour and environmental issues are quite an interesting area. It is widely held that the United States Congress (particularly when controlled by the Democrats) will not accept agreements without robust labour and environmental protection built in. Concern over these two issues, however, has barely been mentioned in the industry statements on the TPP to date. One notable exception has been Oceana, which has highlighted a host of concerns to be addressed in the TPP. The AFL-CIO prepared a separate paper for the USTR, covering

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62 Rules of Origin problems were specifically mentioned by the National Council of Textile Organizations, CropLife America, National Pork Producers, Grocery Manufacturers Association, TechAmerica, National Retail Federation, Wal-Mart, American Sugar Alliance, National Confectioners Association, United States Association of Importers of Textiles and Apparel, and the United States Dairy Export Council.

63 These differing rules for yarn were creating headaches for the National Retail Federation, which urged the USTR to think carefully about which ROO ought to apply to the TPP. See submission, 11 March 2009.

64 Testimony by Franklin Vargo, National Association of Manufacturers, 4 March 2009.

65 See submission of 11 March 2009. This stance was opposed by the National Confectioners Association in its submission on 10 March 2009.

66 Labour and the environment were specifically mentioned by the National Foreign Trade Council, Oceana and Public Citizen.

67 Oceana is not opposed to the TPP negotiations. It noted that all of the States involved have strong marine interests and called on officials to negotiate a new standard for protection of the environment, specifically by promoting trade in sustainable marine products. See testimony by Michael Hirshfield, Oceana, 4 March 2009.
the labour law issues of concern with each of the potential TPP member States. The AFL-CIO also urged that the separate agreement on labour included as part of the P4 Agreement not become the model for the TPP, as the obligations in the MOU were quite weak with no built-in enforcement mechanisms.

F. Other issues for the United States

In addition to the general concerns of industry noted above, three additional issues will have to be considered by American trade officials. Two concern the countries without an FTA with the United States, and include some specific problems with New Zealand agriculture (dairy and beef, in particular), and the possible inclusion of Viet Nam as a member. A third point of concern for the USTR will be the lack of trade promotion authority from the United States Congress. Each of these points is considered below.

1. New Zealand agriculture

United States-New Zealand trade has not been covered under a separate FTA.68 Historically, the obstacles to a closer economic partnership were political, including New Zealand’s refusal to allow American warships with nuclear capabilities to dock or refuel, and, later, a disagreement about support for the Iraq war.

By late 2008, however, these concerns appeared to have receded into the background. This does not mean that a TPP agreement that includes New Zealand will be smooth sailing. The AFL-CIO noted the relatively open trade position of New Zealand, vis-à-vis American exports, in nearly all sectors and asked about additional benefits that might accrue from a TPP FTA.69

The National Milk Producers Federation has expressed deep concerns about the dairy industry in New Zealand.70 The primary problem for American milk producers is that New Zealand’s dairy industry is viewed as a monopoly, with one firm (Fonterra) in control of 90 per cent of the market, and substantial barriers to entry into the market.71 If the American

68 There is a Trade and Investment Framework Agreement (TIFA) in place with regular meetings to discuss trade concerns, but this is not at the level of a regular FTA agreement.
69 Testimony filed by the American Federation of Labour and Congress of Industrial Organizations, 25 February 2009.
70 The American dairy industry was also concerned about the inclusion of dairy products into the United States.-Australian FTA. In the end, dairy was included, but was subject to a lengthy, 18-year, phase-out period. The New Zealand dairy industry was also a problem in the P4 negotiations, with Chile only willing to cut tariffs to zero on implementation for 55 per cent of New Zealand’s dairy exports, with the remaining tariffs to be cut over a 12-year period with the possibility of safeguard mechanisms. See “P4 Economic Partnership Agreement-Key Outcomes,” New Zealand press release, 3 June 2005.
71 The WTO review of New Zealand (2003) found that the dairy industry was no longer a monopoly, but one company had exclusive licences to export to some markets from 2010 onwards. Fonterra (USA), Inc. submitted a letter to USTR during the open comment period (through the legal firm of Blank, Rowe, LLP, on 11 March 2009). It argued that the market in New Zealand was open for competition, with no government subsidies, import tariffs or quota restrictions. It also argued that the entire New Zealand dairy industry was smaller than that of California and that it was no more globally competitive than American dairy products in various export markets.
market is opened to competition through an FTA such as the TPP, the Federation has said that New Zealand dairy products will gain unfair competitive advantages.72

These concerns were echoed by the United States Dairy Export Council.73 The Council noted its support for nearly all other FTAs, stemming from the experience with NAFTA where Mexico has become the single largest destination for United States dairy exports. The American export market was previously driven primarily by the sale of United States government stockpiles and subsidized products, but exports have become an important marketplace for domestic producers.

The Council highlighted deep reservations about the problems of competition in the monopolistic New Zealand dairy industry, which also controlled nearly one-third of all global dairy trade. In addition to rising problems of direct competition,74 a TPP agreement that included dairy products would undermine some important gains from trade as, for example, New Zealand and Australia would become more competitive in the Peruvian market (where neither State currently has an FTA in place). Given the export-oriented structure of the dairy industry in New Zealand and the size of the American market, the group argued that it was likely that much of the production would be directed at the United States.

The United States Congress has picked up this concern.75 Representative John McHugh wrote to the USTR that “the New Zealand dairy industry has the ability to flood our market with new imports, including such dairy products as cheese, milk proteins, butter fat and dairy food preparations. These actions would likely result in the closure of thousands of small and medium-sized American dairy farmers, and negatively [have an] impact [on] rural manufacturers.”76

Another specific area of concern with New Zealand is the beef market. New Zealand is currently subject to tariff rate quotas on beef. If these were removed in the TPP negotiations, the United States Cattleman’s Association has suggested using a quantity-
based safeguard during a phase-out period and the potential for a tariff snapback if imports surge. The United States is the largest market for New Zealand beef exports, worth US$ 785 million in 2008.

2. Viet Nam

Many of the comments from industry highlighted the importance of Viet Nam as a member in the TPP, and not simply as an observer. Many industry associations believed that the largest source of economic gains from a TPP could come from further liberalization and market access in Viet Nam.

In part, the pressures of further liberalization have kept Viet Nam from joining the TPP talks from the outset as a full participant. The country chose to join initially as an observer, until it could determine how much additional economic openness would be required from members. Viet Nam’s 2007 accession to WTO resulted in some wrenching changes at the domestic level to meet the stringent requirements of the accession provisions. These changes, officials have argued, will take time to absorb without agreeing to additional liberalization in other agreements in the near term.

Not everyone in the United States is enthusiastic about Viet Nam’s possible inclusion in the TPP talks. In particular, the American garment and textile industries have expressed strong reservations about an FTA with a non-market economy. The National Council of Textile Organizations noted that after the removal of quotas from Viet Nam in 2007, textile and apparel imports increased by US$ 2 billion – 60 per cent – in two years.

The American Manufacturing Trade Action Coalition came strongly against any FTA agreement with Viet Nam, noting that Viet Nam does not purchase finished goods from the United States, nor does it use substantial amounts of American-made products in its supply

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78 The United States imported 174,000 tons of beef in 2008 under New Zealand’s CSTQ, with an in-quota tariff of US cents 4.4/kg. This produced NZ$ 12.8 million in tariffs. The out-of-quota tariff was 26.4 per cent. The United States is also the second largest importer of New Zealand lamb, at 24,000 tons worth US$ 218 million annually. See “New Zealand Welcomes Positive Signals on TPP Talks,” The Beef Site, 19 May 2009.

79 Interview with officials, Geneva, 1 October 2009.

80 See, for example, the testimony by Cass Johnson, National Council of Textile Organizations, 24 February 2009.

81 The National Council of Textile Organizations argued that it was not fair competition, as the Government of Viet Nam had “poured billions of dollars of government support into the sector over the last 10 years.” Testimony by Cass Johnson, National Council of Textile Organizations, 24 February 2009. In addition, this surge in imports did not merely harm domestic American producers, but also competitors in trade preference areas such as Africa, Central America and Mexico. The National Association of Manufacturers urged officials to take careful note of the apparel sector concerns if Viet Nam moved from being an observer to a full participant. Testimony by Franklin Vargo, National Association of Manufacturers, 4 March 2009.
The Coalition recommended excluding textiles, apparel and other sensitive products from any agreement with Viet Nam. The Rubber and Plastic Footwear Manufacturers Association urged officials to exclude core products of the domestic rubber footwear industry from any agreement with Viet Nam.83

The National Association of Manufacturers noted that the United States ran a large and growing manufactured goods trade deficit of US$ 8.6 billion with Viet Nam in 2008. It highlighted high Vietnamese tariffs (which will be lowered under Viet Nam's WTO accession terms, although not to zero) and the potential benefits that could arise from Vietnamese participation in the TPP.84 The National Confectioners Association made a similar point. Vietnamese tariffs on chewing gum and sugar confectionary products can be as high as 35 per cent. Reduction of these tariffs to an MFN rate of 5 per cent could generate US$ 2 million in export sales in the first year.85

The National Association of Retailers highlighted the importance of Viet Nam to the supply chains of many American firms as well as growing opportunities for retail investment.86 It argued strongly that liberalizing trade in textiles and clothing would benefit American consumers. Other benefits could accrue to the United States dairy industry as a result of further market opening in Viet Nam.87

3. Trade Promotion Authority

One additional complication for future TPP talks is peculiar to the United States’ political system. At present, the President of the United States does not have Trade Promotion Authority (TPA) from Congress. TPA authorizes the Executive Branch to begin trade negotiations and promises that the United States Congress will vote on the agreement as it stands at the conclusion of talks. Congress can only vote the agreement up or down, but cannot suggest changes to the negotiated text. Without having TPA in place, negotiating partners cannot be certain that any hard-fought bargains will remain after Congress goes through the text, line-by-line. At this point, it is unclear whether the Obama Administration

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82 In the testimony by Sara Ormand, American Manufacturing Trade Action Coalition, 4 March 2009, she said: “A potential free trade agreement with Viet Nam would be a disaster and would represent the worst aspects of the failed ‘one-way’ trade policy of the Bush Administration.”

83 The industry did not take a position on trade talks with any of the other States in the TPP talks. Rubber footwear has some of the highest tariffs in the United States and has maintained these tariff levels through successive rounds of negotiations in the WTO and elsewhere. The high tariffs stem in part from a concern over defence needs. See testimony by Mitchell Cooper, Rubber and Plastic Footwear Manufacturers Association, 4 March 2009.

84 Testimony by Franklin Vargo, National Association of Manufacturers, 4 March 2009.

85 See the submission by the National Confectioners Association, 10 March 2009.

86 See submission by the National Association of Retailers, 11 March 2009.

87 Viet Nam’s tariff levels are generally low, and largely falling in areas of significant export promise as a result of WTO accession commitments. See submission by United States Dairy Export Council, 10 March 2009. Land O’Lakes Farmers Coop was specifically enthusiastic about the potential for market expansion in Viet Nam. See submission, 9 March 2009.
will be granted TPA from Congress to open negotiations on the TPP, although 45 members did sign an open letter to President Obama on 10 March 2009, urging him to begin the first round of comprehensive talks.

It is possible to start talks in the absence of such authority, but it is a risky strategy.\(^8\) It means that the USTR must be particularly careful to consult regularly with Congress and industry as negotiations unfold in order to avoid any unpleasant surprises and rejections of the final deal.

4. Australia

In an expansion of the TPP beyond the original founding members, perhaps the second most important State to consider is Australia. Like the United States, the Government of Australia will face conflicting pressures from industry groups. Understanding these interests is important, as they are likely to shape the direction of any future deals.

Australia’s [then] Trade Minister, Simon Crean, announced Australia’s planned participation in TPP talks on the margins of the APEC ministerial meeting in Lima on 20 November 2008. This announcement followed nearly two months of intensive discussions within the Government and industry over the priorities and objectives for the negotiations.

Australia has bilateral FTAs with New Zealand (1983), Singapore and the United States (2003). It concluded an FTA with Chile (2009). Brunei Darussalam was included in the ASEAN/Australia/New Zealand agreement. Given this network of FTAs (and similar overall templates to the United States FTA agreements), negotiating in the TPP should be relatively straightforward.

Australia has strong trade ties with most of the TPP member States. The United States was Australia’s third-largest trading partner in 2008, with a two-way goods trade of A$ 38.8 billion and services trade of A$ 15.9 billion. Singapore was the fourth largest partner with goods of A$ 22.3 billion and services of A$ 8.7 billion.\(^9\) Peru and Chile are members of the Cairns group of agricultural exporting countries with a long history of working together in multilateral trade negotiations.

Like the United States, Australia views the TPP as a building block for further regional integration. With this perspective, policymakers would prefer to be in “on the ground floor” to shape the overall direction of the agreement. United States participation will be critical in keeping up the momentum for greater liberalization and further engagement with the Asia-Pacific region.

\(^8\) The absence of TPA is likely to prove a problem should the Doha Round of the WTO talks be concluded. If it looks like a deal is imminent, the Administration will likely push forward TPA legislation for Congress. Given the politics of trade in the United States at this time, however, renewal of TPA might be granted only for the Doha deal.

\(^9\) Trade at a Glance, 2009, Australian Department of Foreign Affairs and Trade. Overall trade with APEC members accounts for $A 560.8 billion in total two-way trade and a 68 per cent share of Australian trade.
The Government of Australia issued a report in 2008\textsuperscript{90} that reviewed export policies and programmes. The report warned of the potential for Australia to be caught out by the proliferation of trade deals in the region. As a hedge against this possibility, the report recommended developing multiple “clusters” of FTA deals that could ultimately be knitted together into something like FTAAP. The TPP negotiations fit within this cluster approach to trade. The report noted that among States with recently negotiated FTAs, there had not “yet been a strong export response, but the full benefits of the agreements are expected to emerge over time.”\textsuperscript{91}

In announcing Australia’s intention to pursue membership, [then] Trade Minister Crean outlined the following priorities:

(a) Promotion of trade and investment flows with the partners of the Trans-Pacific Partnership negotiations;

(b) Ensuring that the Trans-Pacific Partnership provides a platform for comprehensive liberalization across goods, services and investment;

(c) Substantial improvement of trade and economic integration with Peru, with which Australia does not currently have a free-trade agreement, given the growing commercial interests of Australia, particularly in services and commodities trade;

(d) Pursuit of commercial interests more broadly in the Asia-Pacific region as other countries start to take a closer interest in the Trans-Pacific Partnership process;

(e) Building on WTO rules covering goods, services and investment; and

(f) The provision of a model arrangement that might stimulate other initiatives to multilateralise bilateral FTAs.\textsuperscript{92}

\textit{Australian industry approaches to the TPP negotiations}

Again, like the United States, the Australian Department of Foreign Affairs and Trade solicited public comment on the TPP negotiations on 3 October 2008.\textsuperscript{93} The responses in many ways mirrored the reactions from the United States’ industry groups.

One striking difference between the two States, however, was the importance that Australian firms placed on widening the TPP process to include other States. Industry after


\textsuperscript{91} Mortimer, 2008.

\textsuperscript{92} Ministerial Statement, [then] Trade Minister Simon Crean, 26 November 2008.

\textsuperscript{93} Weighing in to support the negotiations were: ABB Grain Ltd.; American Chamber of Commerce in Australia; Australian Diary Industry Council Inc.; Australian Industry Group; Australian Recording Industry Association; Australian Sugar Industry Alliance Ltd.; Australian Tourism Export Council; Investment & Financial Services Association Ltd.; Minerals Council of Australia; Music Industry Piracy Investigations Pty Ltd.; and the Screen Producers Association of Australia. Opposing negotiations were Australian Fair Trade and Investment Network (AFTINET) and Australian Pork Ltd.
industry recommended bringing China, Japan and the Republic of Korea into the negotiations. Given the trade liberalization already flowing from Australia's bilateral FTAs with most of the presumptive TPP partners, the economic gains from negotiations could be best captured with the inclusion of some of the bigger North-East Asian markets. Several industry officials questioned whether the seven markets in the TPP negotiations (plus Viet Nam as an observer) would be sufficient to attract the interest of those economies in joining. If not, perhaps Australia's Department of Foreign Affairs and Trade's focus should be on negotiating bilateral or regional agreements with the key markets of China, Japan or the Republic of Korea.

Specific points of concern raised by industry for the negotiations included:

(a) Agriculture. The Australian dairy industry asked for a high degree of trade liberalization in agriculture (and specifically dairy products) to include both tariff and non-tariff barriers to trade. The Australian sugar industry noted that the TPP might be a mechanism for bringing liberalization into the American sugar market that was not possible in the United States-Australian FTA. Sugar products were substantially liberalized under the P4 Agreement, so it may be difficult to exclude sugar from the TPP;

(b) Financial services and investment. IFSA encouraged the Government to consider restrictions and regulations on capital and investment flows, discriminatory tax settings and non-recognition of regulatory regimes;

(c) Intellectual property rights. ARIA and MIPI asked the Government to ensure that the TPP include IP protection and strengthen the existing chapter in the P4 Agreement with a view to harmonizing Australian FTA rules and building a broader FTAAP;

94 For example, see the submissions by the Australian Industry Group or Australian Pork Ltd.
95 Agriculture was specifically mentioned by ABB Grain Ltd. and the Australian Sugar Industry Ltd.
97 The United States-Australian FTA, the industry noted, was the only one that either country had concluded that completely excluded sugar. See Ian McMaster, Australian Sugar Industry Alliance Limited, submission on 31 October 2008. The United States National Confectioners Association specifically asked the USTR to review the exclusion of Australian sugar in the TPP negotiations. See submission to the USTR, 10 March 2009. In the P4 Agreement, Chile was granted a special agricultural safeguard mechanism, the “sugar treatment,” based on a trade surplus mechanism. This was the only sector-specific provision in the P4 goods agreement. (See WTO Factual Presentation, p. 38.) Wal-Mart asked the USTR to avoid such sector-specific exclusions in the TPP. See submission by Wal-Mart, 11 March 2009. This was opposed by the American Sugar Alliance, as noted in their submission of 11 March 2009.
98 New Zealand noted that it only agreed to liberalization of sugar products (in solid form, HS 1701) because it did not export such products to Chile. See “Trans-Pacific Strategic Economic Partnership Agreement: National interest analysis,” New Zealand Ministry of Foreign Affairs and Trade, 8 July 2005.
99 Financial services and investment were mentioned by the Investment & Financial Services Association Ltd. (IFSA) and Wal-Mart.
100 IPR was mentioned in detail by Australian Recording Industry Association, Music Industry Piracy Investigations and the Screen Producers Association of Australia.
(d) Labour and the environment.\textsuperscript{101} CFMEU and AFTINET both asked for labour standards in the TPP, while expressing concerns about the movement of persons and rights of indigenous peoples. AFTINET asked for strengthening multilateral environmental agreements. The National Centre for Marine Conservation and Resource Sustainability highlighted problems of marine management;

(e) Rules of Origin.\textsuperscript{102} Ann Capling strongly urged the Government to adopt a common set of rules of origin in the TPP negotiations, as part of a wider objective to address the discriminatory problems of FTAs.

Industry officials also expressed a set of concerns at the domestic level. They called on the Department of Foreign Affairs and Trade to continue to negotiate in the context of an open and transparent process with sufficient access for public consultations.

G. Conclusion

At this early stage, any assessment of the prospects for the Trans-Pacific Partnership talks is difficult. Nevertheless, a few things seem clear. First, this is an agreement that is not primarily driven by economic considerations. Instead, it is a political statement about binding together different regions of the world. Member countries want to use TPP participation as a means of cementing their relationship with Asia.

Second, the TPP Agreement is one step in a larger quest for greater trade liberalization. It could either incorporate more partners (with particular emphasis on the economies of North-East Asia) or even the entire APEC membership. In fact, without the incentive of other potential accessions, the motivations for discussion dim considerably.

Third, if the TPP does not expand, it will do little to achieve further liberalization or to catalyse trade in the Asia-Pacific region. The participating member States are already relatively open to trade and are already well-connected through bilateral FTA webs to one another. The amount of trade conducted among the seven States is limited and does not have the potential for significant expansion in the near term.

Fourth, the TPP will not serve the goal of rationalizing the overlapping problems of multiple free trade arrangements in the region. By allowing States to continue to use the provisions of existing bilateral agreements – alongside the TPP rules – the agreement merely adds another layer of “pasta” to the “spaghetti bowl”.

Finally, although talks on expanding the P4 Agreement into the TPP will go relatively smoothly, given the existence of overlapping FTA deals, the negotiations still contain a few sticking points. It took five rounds of bargaining for the original four States to reach

\textsuperscript{101} Labour and the environment were covered in detail by the Construction Forestry Mining and Energy Union (CFMEU), Australian Fair Trade and Investment Network (AFTINET), and the National Centre for Marine Conservation and Resource Sustainability.

\textsuperscript{102} Submission by A. Capling, 30 October 2008.
agreement (and then only by putting aside the two most contentious chapters for further consideration), even though they had almost no trade between four very small and open economies. Negotiations on expanding from four to seven (or eight) States will take longer and be much more complex. In particular, the existing template of the P4 Agreement will not be adequate to get the United States on board. This chapter has highlighted some of the probable areas of intense discussions for two incoming States.

The problem of reaching a satisfactory deal is compounded by the desire of the member States to create a final agreement open to additional accession by other States. This means that deals struck in the TPP must be suitable for a wide range of potential partners in the future. It must also not be so limited or limiting that these potential partners choose not to participate. This will make future negotiations especially complex. The potential stakes are high if the TPP is, indeed, to form the path to a free trade agreement in the Asia-Pacific region.