Gold Standard or WTO-Lite?: Shaping the Trans-Pacific Partnership

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It's time for a new vision of global economic integration grounded in real market-based trade; with companies, not countries, determining trade and investment patterns.

The vision for trade liberalization many envisioned in the 1990s after the success of the Uruguay Round has not quite worked out as anticipated. While global trade and investment has expanded dramatically, tariff barriers have come down, and the new institutions created by the Uruguay Round have contributed significantly to global economic governance, at a practical level many U.S. competitors responded by increasing, not reducing, an array of non-tariff barriers (NTBs) as part of concerted mercantilist strategies.

Unfortunately, the members of the World Trade Organization (WTO) have demonstrated that they are unwilling and/or incapable of addressing these corrosive practices. For its part, the leaders of the WTO have done a woefully inadequate job of denouncing the proliferation of a range of mercantilist practices, being more forceful proponents of countries taking the rules seriously, and supporting stronger rules. Moreover, the Doha Development Agenda, which the WTO round launched a decade ago, is now almost universally regarded as dead as a means of combating the growth of NTBs. Although, even in life, the Doha round never came to grips with NTBs in any serious way.

As such, proponents of further global integration (as ITIF is) need to recognize that unless something is done differently, the current path toward greater trade and globalization will simply be unsustainable. In a global economy in which the nature of competition among companies has largely shifted from a battle purely for market access to one in which companies compete on the basis of capital, talent, and ideas, mercantilist policies that hinder the ability of firms to take full advantage of those factors of production are deeply inconsistent with progress toward deeper economic integration.

In the short run, however, mercantilist policies can do untold damage to individual companies, to jobs in countries at the "receiving end" of these policies, and to the broad

public support needed to make progress on further trade and investment liberalization. It's time, therefore, for a new vision of global economic integration grounded in real market-based trade; with companies, not countries, determining trade and investment patterns.

One path to this new regime is the Trans-Pacific Partnership (TPP), a free trade agreement the Obama Administration is currently negotiating entrance into to increase regional economic integration across nine Asia-Pacific nations: Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States.[1] (Australia, Brunei, New Zealand, and Singapore conceived and launched the TPP in 2006; Chile, Malaysia, Peru, Vietnam, and the United States are now in negotiations to join the agreement, and the United States has invited Thailand to join the negotiations.)[2] The TPP seeks to represent a new kind of trade agreement, one that serves as a platform for other nations to join in to and that addresses both tariff and non-tariff barriers to set a standard by which countries can conduct true, market-based trade.

But while the TPP has the potential to be a model 21st century free trade agreement, it will only become so if it holds nations who sign it to the very highest standards, including those regarding intellectual property (IP) rights protections, transparency and openness in government procurement practices, restrictions on preferential treatment toward state-owned enterprises (SOEs), transparent standards setting processes, comprehensive tariff reductions, elimination of a host of non-tariff barriers, and at least equal, if not greater, emphasis on enforcement as on market access. Likewise, if the TPP is to be more than simply just one more trade agreement for countries to join that they then proceed to ignore, the countries participating must fully renounce mercantilist practices and truly open their markets.

Unfortunately, in its desire to achieve an apparent victory on trade—the TPP is the United States' only active trade negotiation—the Obama Administration risks signing a watered-down TPP accession agreement instead of one achieving the most rigorous defense of true market-based trade. In fact, there are early signs that negotiators intend to try to deliver at least the outline of an agreement by the time President Obama hosts the Asia Pacific Economic Cooperation (APEC) leader's meeting in Honolulu this coming November.

Rather than rushing to meet an artificial deadline, U.S. negotiators should instead focus on crafting an agreement capable of serving as a model for regional integration throughout Asia and the Pacific and as a foundation upon which a stronger set of global rules can be built. It would be a mistake for the United States to enter into a sub-standard TPP that offers only weak IP protections and that lets countries maintain mercantilist practices; doing so would in fact be far worse than not joining the agreement.

Given the ramifications, both for integration of the world's most economically dynamic region and for the trading system globally, the United States should seize with the TPP the opportunity to do something new and groundbreaking: develop a gold-standard trade agreement, not just a bronze one. And if in insisting on a gold-standard agreement just one other nation joins us, that is better than having five, ten, or twenty other nations join in an agreement that lets mercantilist trade practices continue to proliferate.

To be sure, sound economic and commercial logic lie behind U.S. interest in seeking to join the TPP. The United States should be actively seeking out and building coalitions of like-minded countries that are committed to the principles of free, market-based trade and that explicitly exclude countries whose "dominant logic" toward trade is characterized by an "innovation mercantilism" that seeks to realize innovation-based economic growth at the expense of others.[3] Unfortunately, while the global trading system remains rife with mercantilist practices, the WTO, whose primary purpose is ostensibly "to open trade for the benefit of all," has not been a full throated advocate against innovation mercantilists. Moreover, the various delays in the full implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) by all WTO members has hobbled the WTO's ability to enforce those disciplines. Equally, WTO members who currently take advantage of the relatively weak rules that do exist have had little incentive to agree to stronger commitments as part of the more recent Doha round. Indeed, in several material aspects the TRIPS agreement has been weakened, rather than strengthened, as a part of those talks.

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Whether because the WTO (and its member countries) continue to look the other way in the face of systemic mercantilist practices such as currency manipulation, export subsidies, standards manipulation, IP theft, and the forced transfer of technology as a condition of market access, or because some of these practices are not fully covered by its terms, the WTO is limited in its ability to enforce action against rampant mercantilism. We need a new path. Therefore, the United States needs to pursue a two-pronged trade strategy, continuing as best it can to improve conventional trade organizations like the WTO, but also creating alternative "play-by-the-rules" clubs of like-minded countries.

This in fact was the originating spirit behind the TPP. As Jim Sutton, New Zealand's Minister of Trade Negotiations, commented upon the completion of the original four-country TPP trade pact, "The shared vision of the leaders was to create a trade agreement that could act as a platform for expansion within the Asia-Pacific region."[4] But Sutton's vision has been tarnished by the inclusion into the TPP of countries with a history of mercantilist practices, several of which have pushed to weaken the TPP's standards, including its IP protections. Unless the United States is willing to press hard for higher standards as a condition of its participation, the TPP risks turning into a mini-WTO likewise rife with mercantilists who continue to practice their policies with impunity.

But it is precisely because the Trans-Pacific Partnership is envisioned as a scalable platform that other nations can join that it must be a gold-standard agreement written to eliminate the lion's share of tariff and non-tariff barriers while ensuring the highest levels of IP protection. If the United States signs on to a TPP agreement with weak standards, it will undermine its ability to secure stronger standards in future bilateral and multilateral trade agreements. Whatever provisions with respect to intellectual property, treatment of SOEs, removal of NTBs, etc., the United States agrees to in the TPP will set a precedent that will likely establish the baseline for future trade negotiations with mercantilist nations like China, meaning that if the United States does not negotiate a gold-standard TPP, it will compromise its future ability to secure favorable trade terms with other nations.

While the goal will be to sign a gold-standard TPP, we believe that the Administration should seriously consider the development of a TAP (a Trans-Atlantic Partnership). While Europe and the United States certainly engage in occasional disputes over trade, by and large they both respect intellectual property rights, the rule of law, the primacy of markets in setting currency prices, the primacy of private investors in determining the location and nature of their investments, and other free trade practices. Over sixty years ago when the first General Agreement on Tariffs and Trade (GATT) was signed, most of the twenty-three original signatories were either European or Commonwealth nations that more or less played by these kind of rules. But as the GATT expanded and evolved into the WTO, it encompassed a wider range of nations, including many who design their trade policies not to maximize allocative efficiency from trade (e.g., to trade wine for textiles, in the Ricardian sense) but to drive exports and to favor domestic firms. As a result, the United States needs to once again take the lead in designing a new trade agreement, but this time for the Ricardians, not the mercantilists. And the best place to start would be to work to create a Trans-Atlantic Partnership with Canada and the EU-15 nations.

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THE SPREAD OF INNOVATION MERCANTILISM

Mercantilism refers to a systemic approach on the part of certain nations to manipulate globalization and trade to their unilateral advantage, often by using practices such as currency and standards manipulation, IP theft, extensive erection of non-tariff barriers, abuse of anti-trust, regulatory, and competition policies, or many others that violate the letter or the spirit of the WTO (or other bilateral and multilateral trade agreements). Innovation mercantilism involves the use of these practices in order to unfairly grow high-wage, innovation-based jobs and industries. Ultimately, mercantilist policies seek to realize innovation-based growth through a negative-sum, beggar-thy-neighbor approach. Most mercantilist countries have adopted the mistaken belief that exports in general, and high-value-added exports in particular, are the "holy grail" to economic growth.[5] These countries place the vast majority of their innovation focus on supporting the manufacturing and export of internationally tradable products, while giving very short shrift to the ability of their non-traded services industries to boost economic growth.

Innovation mercantilism has proliferated for several reasons. Countries like Brazil, China, Indonesia, Malaysia, Russia, Vietnam, and others see themselves as following in the footsteps of Japan and the Asian tigers—Hong Kong, Singapore, South Korea, and Taiwan—which appeared to successfully grow their economies around high-productivity, export-based sectors (such as high-tech or capital-intensive manufacturing) by limiting imports and unfairly favoring domestic producers. Yet while these countries may believe innovation mercantilism has been an effective policy, that approach is no longer sustainable both because the United States and Europe are inundated as import markets and because broadly raising productivity throughout an economy is a much better path to growth, as ITIF's report *The Good, the Bad, the Ugly, and the Self-Destructive of Innovation Policy* explains.[6]

Another factor contributing to the spread of innovation mercantilism is that nations find themselves in a prisoner's dilemma: some countries may resort to mercantilist practices if they feel forced to do so by the actions of other countries. For example, China undervalues

its currency by about 25 percent on a trade-weighted basis and by 40 percent against the U.S. dollar, which subsidizes all Chinese exports by 25–40 percent while placing the effective equivalent of a 25–40 percent tariff on imports. This blanket policy helps Chinese exporters boost exports to all countries, but damages the interests of all foreign exporters who would sell to China.[7] This has compelled other countries, such as Hong Kong, Japan, Malaysia, Singapore, South Korea, Taiwan, and even Switzerland to intervene in currency markets and substantially undervalue their currencies against the dollar and other currencies in an effort to help their exporters remain competitive with Chinese firms.[8]

Therefore, it's imperative that policymakers make concerted efforts to eliminate mercantilist practices, for not only do such policies harm other countries, they then cause the system to devolve into a competition where every country has the incentive to cheat, and to beggar-thy-neighbor. And so the overall system decays, the competition becomes worse, and the global economy suffers as all countries fight for a slice of a smaller pie. That results because mercantilist strategies retard growth in global innovation and productivity. For example, by stealing intellectual property or by forcing companies to transfer technology or sell technology-based products below normal market price, countries reduce revenues that could have been invested in innovation that would benefit humankind as a whole. Moreover, by either coercing firms or providing incentives for them to locate where they otherwise would not, mercantilist innovation policies raise total global production costs. Mercantilist policies thus undermine the ability of global economic integration to produce shared global prosperity.[9]

The WTO system has proven itself incapable of systemically addressing the challenges to the global trading system presented by rising mercantilist practices.

As described previously, the WTO system has proven itself incapable of systemically addressing the challenges to the global trading system presented by rising mercantilist practices. Some of this stems from the WTO's focus on not wanting to rock the boat and "create trade wars." For the WTO, more trade is better than less, even if much of that trade is mercantilist in nature. Some stems from the fact that some, if not many, mercantilist practices are not covered by the WTO and are therefore not addressable through the WTO framework. And some stems from the WTO's inclination to not come down hard on particular mercantilist nations, instead "blaming" all countries to some extent.

WHAT A "GOLD-STANDARD" TPP NEEDS TO ACHIEVE

For these reasons, the United States needs to chart a new anti-mercantilist path forward, and the Trans-Pacific Partnership can represent the start of that path. But only if it takes a forceful stand against mercantilist practices, both by prohibiting mercantilist practices within the agreement and by refusing admittance to countries still employing such practices. But at this point, there's much room for progress on both accounts in the TPP. In particular, for the TPP to be the gold standard it must ensure strong protection of IP rights; open and non-discriminatory government procurement; non-preferential treatment of state-owned enterprises; services trade liberalization; true market access; comprehensive elimination of currency manipulation and other non-tariff barriers; and a substantial reduction of tariff barriers.

TPP Partners Must Better Protect IP Rights

Global innovation is maximized when intellectual property rights are adequately protected. Moreover, intellectual property protections are vital because an increasing share of the U.S. economy, and thus U.S. exports, are based on knowledge-intensive products and services. As the most innovative and creative economy in the world, the United States has the most to lose from weak or ambiguous IP standards. In fact, one study found that IP-intensive industries employ more than 19 million Americans and account for approximately 60 percent of total U.S. exports.[10] Products relying on embedded knowledge—like movies and music, software, or pharmaceuticals—have very high-fixed costs in their development, but low-marginal costs in their production, meaning that they can easily be copied or pirated. Such IP theft is extremely damaging to U.S. companies and to the overall U.S. economy, with the Department of Commerce finding that theft of U.S. intellectual property tops $250 billion annually and costs the United States approximately 750,000 jobs.[11] In fact, the U.S. International Trade Commission estimates that IP-intensive U.S. firms that conducted business in China in 2009 incurred losses of at least $48.2 billion in sales, royalties, or license fees due to IPR infringement in China.[12] As the global trading system that was once predicated on removing quantifiable tariffs on physical products like automobiles or crates of bananas increasingly moves toward trade in knowledge-intensive products and services, the United States should only enter new trade arrangements with the most stringent IP protections.

Unfortunately, most of the current and candidate TPP signatories have spotty records on IP protection issue. Indeed, the United States Trade Representative Office's (USTR's) *2011 Special 301 Report* has placed four TPP countries—Brunei, Malaysia, Peru, and Vietnam—on the Special 301 Watch List, and a fifth, Chile, on the Priority Watch List.[13] The Watch Lists identify countries that do not provide "adequate and effective" protection for U.S. intellectual property rights holders.

Chile was placed on the Priority Watch List because it has yet to adequately implement "an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products, to implement protections against the circumvention of technological protection measures, to implement protection for encrypted satellite signals, and to ensure that administrative and judicial procedures and deterrent remedies are made available to rights holders."[14] Brunei has seen, "significant growth in illegal downloading of pirated works of all kinds from the Internet, ranging from entertainment software and business software to audiovisual works, including movies and television programs."[15] Malaysia "has remained on the Special 301 Watch List since 2001 because of continuing concerns including its failure to substantially reduce pirated optical disc production and exports."[16] USTR's *2011 National Trade Estimate Report on Foreign Trade Barriers* noted that ongoing U.S. IP concerns in Malaysia include, "Continued widespread piracy and counterfeiting, declining IP enforcement efforts, and lack of *ex officio* initiated IP investigations by customs officials."[17] Peru was placed on the Special 301 report Watch List because "piracy rates remain high. Inadequate law enforcement contributes to ubiquitous counterfeit clothing, medicine, music, videos, software, and toys."[18] Moreover, Peru needs to implement "stronger measures to prevent government use of unlicensed software."[19] And USTR placed Vietnam on its Watch List because of, "high levels of copyright piracy, increasing levels of piracy over the Internet, satellite and cable signal piracy, and the general

availability of counterfeit goods in the marketplace."[20] If the TPP is to truly be a 21st century trade agreement, it can't include countries, or at least can't allow the practices of countries, consistently finding themselves on the United States' Special 301 Watch List for failure to adequately enforce intellectual property rights. If they want to join the TPP, they need to get off the Watch List and stay off.

Just as troubling, there is reason to be concerned with IP protections even in those TPP countries not on the Watch List, such as Singapore and New Zealand. With regard to Singapore, "the United States continues to have concerns regarding the government's efforts to enforce IP, including the continued transshipment of infringing goods through Singapore, insufficient deterrent penalties for end-user piracy, and the lack of meaningful enforcement against online infringers."[21] In New Zealand, the current draft of revised patent legislation would exclude computer programs, a provision that is unaligned with patent eligibility standards in other developed economies and that is a departure from New Zealand's current Patents Act.[22] Nor does the proposed bill conform to a number of international best practices in IP protection, such as providing for patent term restoration, which enables rights holders (such as for pharmaceuticals) to recoup the effective patent term lost due to delays in the drug marketing approval process.[23] New Zealand has also not acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty.

Five of the nine candidate or current TPP nations are on the USTR Watch List for failing to adequately protect the intellectual property rights of U.S. IP holders.

Therefore, as U.S. negotiators seek to table a complete proposal for the IP protections chapter of the TPP by June 20, 2011, the U.S. government must aggressively press for state-of-the-art intellectual property protection and enforcement provisions, building on the world-class provisions of the U.S.-Korea Free Trade Agreement (KORUS) and U.S. law to level the playing field outside the United States for industries dependent on IP protections As a bipartisan group of 28 U.S. Senators wrote to President Obama on May 17, 2011, the final TPP agreement should "include the highest standards for intellectual property protection" with "IP provisions that are clear, specific, and enforceable."[24] Moreover, U.S. negotiators should improve protection and enforcement of IP rights by ensuring that the IP provisions in the TPP and other existing agreements are implemented properly.

U.S. trade negotiators should also ensure that the TPP is responsive to the intellectual property protection needs of specific industries, such as software or pharmaceutical manufacturers. For example, in addition to strong patent protections, the TPP should have very strong data protection provisions. Data protection protects the actual investment needed to prove the safety and efficacy of a biopharmaceutical product, establishing a set period of time after product approval during which no other entities may rely on the innovator's data to obtain a marketing authorization for a third party product. The TPP should include data protection provisions consistent with U.S. laws and standards, which currently provide data protection of at least twelve years for biologics and at least five years for non-biologics.

The United States must also be certain to defend copyright and trademark provisions in the TPP. The reauthorization of New Zealand's patent system could potentially remove

patent protection for software, and potentially also for trademark protection.[25] U.S. negotiators must ensure that software patent provisions persist in the TPP.

TPP Members Must Commit to Open and Non-discriminatory Government Procurement

A core principal of market-based trade is that government purchases should be made on the basis of the best value for government, not on the basis of national preferences. It is therefore a concern that only one of the eight other TPP countries, Singapore, is a signatory to the World Trade Organization's Government Procurement Agreement (GPA).[26] In fact, Australia is the only major industrialized country that is not a GPA signatory.[27] The GPA prohibits restrictions on government purchases between member countries, stating that companies in other signatory countries will not be discriminated against and will receive treatment no less favorable than that enjoyed by domestic companies, a concept known as "national treatment." But it's clear that candidate and current member TPP countries have not followed global best practice with regard to ensuring national treatment in government procurement.

In Brunei, "The [government procurement] award process often lacks transparency, with tenders sometimes being not awarded or re-tendered for reasons not made public."[28] Malaysia's official policy is to use government procurement to support blatantly mercantilist national public policy objectives, such as forcing the transfer of technology from foreign to domestic industries, reducing the outflow of foreign exchange, providing advantages to local companies in the service sector, or boosting Malaysia's export capabilities.[29] Moreover, Malaysia's lack of transparency in government decision making and procedures has impeded U.S. firms' access to the Malaysian market.[30] Although U.S. firms are excluded from this mercantilist practice since the signing of the U.S.-Peru Trade Promotion Agreement in 2006, Peru applies a 20 percent price preference to bids by Peruvian firms (over other foreign firms) in government procurement.[31] For its part, Vietnam's government has introduced specific preferences for open source software in government procurement, in an effort to minimize purchases of foreign software.[32] Moreover, Vietnam's "lack of transparency, accountability, widespread official corruption, and inefficient bureaucracy" remain serious obstacles to foreign business activities, including the ability to compete for government procurement contracts.[33]

Discriminatory practices are also evident with regard to procurement of foreign pharmaceuticals by national health systems. For example, New Zealand's Pharmaceutical Management Agency (PHARMAC), negotiates pricing and manages reimbursement for pharmaceuticals, controlling 95 percent of the country's pharmaceuticals and prescription drug market. Once a medicine passes the country's safety and regulatory review process, it enters a pricing and reimbursement review to determine if and at what price the government will reimburse the medicine. But the process administered by PHARMAC appears to lack timeliness, transparency, and accountability. There are no established timeframes for the review period, the agency does not have to provide any rationale for its decisions, and there is no right of appeal, so that if a foreign pharmaceutical maker's application for a drug's reimbursement is denied, there is no recourse. Thus, countries with national formularies like New Zealand can manipulate the pricing and reimbursement

system so that the foreign applicant is left with hardly any patent life, enabling the government to quickly turn to a generic drug version when the patent life on the original pharmaceutical expires.

For all of these reasons, the Trans-Pacific Partnership must ensure transparent and non-discriminatory access to foreign government procurement markets for U.S. suppliers across all industries. In particular, the TPP should include specific agreements to promote regulatory transparency, accountability, and objectivity in government procurement, including providing an opportunity for stakeholders to provide input.

Non-preferential Treatment of State-owned Enterprises

State-owned enterprises and state-supported enterprises (SSEs) represent a major challenge to the United States' international competitiveness, not because such enterprises are paragons of efficiency or innovation, but because they are all too often recipients of unfair subsidies and protections by their governments. The U.S. National Intelligence Council's *Global Trends 2025: A Transformed World* report argues that, by 2025, "state capitalism" in the form of "state-directed economies" is likely to be a major threat to the United States.[34]

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The TPP represents an important opportunity to develop more adequate and effective rules governing the operation of SOEs and SSEs so that companies from all countries can compete on an equal footing under terms of "competitive neutrality."[35] Competitive neutrality—a key principle advocated in the OECD's work on SOEs and corporate governance—holds that government-supported business activities should not enjoy net competitive advantage over their private sector competitors.[36] Strong provisions regarding the treatment of state-owned enterprises are especially vital if the TPP is to expand in the future to include nations such as China or India.

Specifically, the TPP should clarify the scope and coverage of national treatment, explicitly subjecting state-influenced entities to a robust national treatment obligation. The goal is to capture policies and practices that benefit state-supported firms and entities and give them unfair advantage over private firms in competing for market access in their home markets, in cross-border transactions, and in third markets.[37] In addition, the existing procurement exemption of the national treatment obligation should be modified to prevent misuse of the provision that could allow wide swaths of state behavior to escape the basic non-discrimination obligation. Specifically, the procurement exemption should be replaced with a more limited exception to national treatment for purchases by and for the use of identified government agencies and covered entities.[38]

There has been some resistance within the U.S. government to introducing strict curbs on SOE subsidies and practices in the TPP. In particular, the U.S. Treasury has raised questions about whether proposed curbs on SOEs could hamper future governmental responses to global economic crises or be used against U.S. government-backed enterprises such as the mortgage firms Freddie Mac and Fannie Mae.[39] But Treasury needs to place more emphasis on U.S. global competitiveness when considering matters such as this (including currency manipulation by other nations). Not only are these weak excuses to not tackle rampant abuse of regulatory favoritism and preferential purchasing and financial

support for SOEs in countries like Brunei, Malaysia, and Vietnam (not to mention China), certainly the TPP can be written to preserve legitimate defensive interests using mechanisms such as a list of sectoral or agency exemptions, or an exception for measures related to economic emergencies. Failure to address preferential treatment of SOEs and SSEs in the TPP will signal that the United States does not really intend to address the 21st century challenges of SOE distortions in world markets and is willing to abdicate its role of protecting U.S. companies in global competition against unfairly subsidized and sheltered competitors.

Services Trade Liberalization

While still much smaller in overall volume, global services trade is growing faster than goods trade and as such is a key area to get right in trade agreements. Unfortunately, the *2011 National Trade Estimate Report on Foreign Trade Barriers* notes that almost every would-be TPP partner places significant barriers on trade in services. These include Chile's restrictions on U.S. asset fund management services; Malaysian restrictions on retail trade; and New Zealand's and Peru's barriers to competition in wireless communications through high mobile termination rates.[40] Singapore handicaps foreign banks and other financial institutions that issue credit cards in Singapore by not permitting them to provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally issued credit card holders through their own network or through a foreign bank's shared ATM network, but not through ATMs operated by locally-owned banks, a restriction card issuers face only rarely outside Singapore.[41] Vietnam places restrictions on foreign express delivery and distribution services providers.[42] The TPP should seek to liberalize trade across all services sectors, enabling services to be delivered more cost effectively, efficiently, and flexibly across all markets in TPP member countries.

Market Access

Market access is at the heart of free trade. Yet, many TPP nations restrict market access. Malaysia imposes restrictions on imports of motor vehicles through an approved permit system that acts as a quota by restricting the total number of vehicles that can be imported in a given year, with the level capped at 10 percent of the market.[43] Peru restricts imports of used vehicles and trucks. Several candidate and member TPP countries place limits on the ability of U.S. pharmaceutical manufacturers to market and distribute innovative biopharmaceutical products. Such forms of quotas or import restrictions must be comprehensively swept away in any serious Trans-Pacific Partnership agreement. Indeed, the TPP must ensure that all its members commit not only to meaningful market access in their national markets, but also to establish mechanisms to ensure enforcement of market access commitments.

The Trans-Pacific Partnership should also include strong, binding provisions ensuring trade in computer and related services and the cross-border flow of data, information, and digital goods and services, which will ensure that countries (and the domestic and foreign companies operating therein) reap the full economic benefits of information technologies such as the Internet. The TPP should also specifically prevent countries from requiring the location of servers or data in-country as a condition of market access, an action that would preclude the growth of cloud computing services. With regard to the import and

commercial sale of products containing cryptographic capabilities, TPP countries must preserve market access by committing to not require the transfer of or access to proprietary knowledge, require partnering with a domestic entity, or require the use of a particular technology or standard not based on a relevant international standard.

Eliminating Non-tariff Barriers

The TPP should seek to wherever possible eliminate discriminatory standards, discriminatory industry-specific market distorting subsidies, regulatory distortions, and other non-tariff barriers that prevent effective access for U.S. goods and services in foreign markets. One common NTB remaining across most would-be TPP countries is restrictions on foreign ownership, particularly in telecommunications industries. Malaysia entitles foreign companies to acquire only up to a 30 percent equity stake in facilities-based telecommunications operators; Australia caps foreign equity interest in Telestra, its largest telecom, at 35 percent; and Vietnam caps foreign ownership of private networks at 70 percent. But foreign equity limits apply in other industries as well. Malaysia limits foreign equity to 30 percent for domestic conventional banks.[44] In Vietnam, all land is owned and managed by the state, meaning that neither foreigners nor Vietnamese nationals can own land.[45] Moreover, Vietnam has specific laws pertaining to foreign investment in "conditional sectors" such as banking, securities, insurance, mining, telecommunications, real estate, ports, and aviation.[46] In other TPP countries, like Brunei, "Foreign investment policies are unclear, particularly with respect to limits on foreign equity participation and the identification of sectors in which foreign investment is restricted."[47] Thus, any final TPP agreement must assiduously seek to clearly identify and remove continuing barriers to foreign investment limits. The TPP should also encourage member countries to create new procedures promoting coherence and convergence in the promulgation of their regulations.

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Conventional Tariff Reduction

Of course, the TPP should also seek to comprehensively reduce traditional tariff barriers across-the-board, such as in Malaysia, where the *National Trade Estimate Report on Foreign Trade Barriers* finds that "the simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent."[48] In fact, Malaysia's simple average applied tariffs actually rose from 7.4 percent in 2009 to 8.4 percent in 2010.[49] In many TPP countries, notably Chile and Peru, high tariffs remain on many classes of agricultural products. Steep duties also remain on many information and communications technology (ICT) products. For example, Brunei slaps duties of 20 percent on printed circuit boards, cathode ray tubes, and semiconductor media. Malaysia imposes duties of 25 percent on cathode-ray tube monitors and all monitors not incorporating television reception apparatus. Vietnam places maximum ad valorem duties of 44 percent on video recording apparatus, 25 percent on solid-state data storage devices, and 20 percent on semiconductor media.[50] Chile imposes maximum ad valorem duties of 6 percent and Peru 9 percent across a wide range of ICT products.[51] TPP countries also place stiff tariffs on a range of other high-technology products, notably in green and renewable energy technologies. For example, on lithium-ion cells and batteries, Vietnam, Brunei, and Peru place maximum tariffs of 26 percent, 20 percent, and 12 percent, respectively.[52] The TPP should seek to comprehensively eliminate tariffs on low- and high-technology products alike.

CONCLUSION

In the May 2011 issue of *Foreign Affairs*, Susan Schwab, U.S. Trade Representative from 2005 to 2009, contends that the current Doha round of multilateral trade talks is doomed and therefore that world leaders should focus on promoting smaller trade agreements.[53] Creating agreements among smaller groups of countries willing to commit to play by the rules makes a lot of sense for U.S. trade policy, and the Trans-Pacific Partnership offers great potential in this regard. But the United States should insist on a very high set of standards for the TPP, only join if the bar is set high, and insist that all nations who do join have to meet those standards.

Certainly there are compelling economic reasons to expand trade integration with the TPP countries. As a group, TPP countries constitute the United States' third largest goods export market and fourth largest services export market.[54] These exports support jobs and higher real wages. In fact, Asia already accounts for 27 percent of total U.S. jobs from exports, and one study finds that an Asia-Pacific trade agreement would increase real U.S. income by 1.2 percent.[55] Others have argued that with "the future of Asian regionalism in extreme flux…there are major strategic imperatives for the Obama administration to move with speed," in completing the Trans-Pacific Partnership.[56]

If the Trans-Pacific Partnership is anything less than a gold-standard trade agreement, the United States should decline to join.

But while the TPP Agreement does indeed hold the opportunity to boost U.S. exports and "to trigger a wholesale reconfiguration of Asian commercial alliances," this does not mean that the United States should subordinate the crafting of a potentially transformative, high-standard 21st century trade agreement that protects and empowers U.S. economic interests over the long run to the short-term goal of immediately jumpstarting exports (and potentially jumpstarting imports even more) or the geopolitical goal of deepening Asia-Pacific regional integration as a strategic block on China.[57]

Nor should the Administration approach TPP negotiations as an opportunity to score a quick win on trade. Rather, the Administration's trade negotiators should insist that the TPP truly be a 21st century agreement that upholds the highest levels of intellectual property rights protection, transparency in government practices, removal of non-tariff barriers, and comprehensive market access provisions, while including stringent enforcement mechanisms. That's the best way to empower U.S. enterprises, grow jobs, exports, and the economy, and ensure that the United States' long-term strategic and economic interests are realized. Accordingly, the United States should close the door on current or future candidate TPP countries still committed to mercantilism as their core economic development strategy. And if the Trans-Pacific Partnership ends up being anything less than a gold-standard trade agreement, the United States should decline to join.

ENDNOTES

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