President Obama has discovered first-hand how difficult wrangling the interests of a dozen nations can be. For six years, the Trans-Pacific Partnership (TPP) has been in negotiations and might prove to be Obama’s crowning foreign policy achievement. If the 12-nation Free Trade Agreement (FTA) passes, it will shape the future of economic development in the Asia-Pacific and cement the U.S. as the head honcho in region, but despite recent progress the deal is no sure bet. It certainly sounds important, but what does the TPP actually mean for its members? For an FTA as significant and comprehensive as the TPP, there has been surprisingly little media coverage thanks in part to the secretive nature of negotiations. What is known, however, is that the TPP is a big deal both literally and figuratively.

The agreement is one of the most ambitious multilateral projects in history encompassing nearly 40% of the world’s GDP. It involves 12 countries: The United States, Canada, Chile, Mexico, and Peru from the Americas and Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam in the Asia-Pacific. The TPP is notable among a myriad of smaller, regional FTAs not only because of its diverse membership, but also because the scope of its proposals reach beyond simple customs and tariff negotiations. The agreement will delve into the realms of intellectual property rights, financial services, labor and structural reforms, and environmental regulations. The comprehensive deal is what President Obama likes to call a “21st century trade agreement.” Assuredly, it would be much less complicated to omit behind-the-border issues that directly affect the internal governance of member states, but it is a decision the U.S. believes is necessary step to normalizing trade and economic integration throughout the region.

Despite its ambitious nature, the TPP did not begin with the aim of becoming a huge, multilateral trade deal involving some of the biggest players in the Asia-Pacific
Economic Cooperation (APEC) forum. The framework for today’s deal was born from an agreement among four countries: Brunei, Chile, New Zealand and Singapore. This limited, four-country deal attracted the attention of the United States as a potential gateway to a wider trade network in the region. In September of 2008 the U.S. entered talks with these countries regarding trade liberalization in the financial sector. Australia, Peru, and Vietnam joined the list of potential members by the end of the year. The official first rounds of talks regarding the newly dubbed Trans-Pacific Partnership proposal began in 2009 and it has been one of the Obama administrations top foreign policy objectives ever since. In 2012, Canada and Mexico joined the TPP negotiations and Japan soon followed in 2013. The addition of Japan was a game changer for the importance, and complexity, of the deal. As the world’s 3rd largest economy, Japan became the first Asian country that could bargain on a similar footing with the US. While it was a risk bringing in such an economic heavy hitter, Japanese involvement means that the TPP is all the more significant for regional relations.

But what does the expanded membership mean for the TPP's importance? Many see the deal as the first step in untangling the spaghetti bowl of overlapping trade regulations and norms woven throughout the Asia-Pacific. Others see blatant opportunism and accuse the U.S. and other developed countries of leveraging market access at the expense of smaller nations’ independence. Additionally, the notable exclusion of China prompts many to surmise that the TPP is intended to curb Chinese influence in the region, an assertion that President Obama's recent statements seem to support. Most of this is speculation, however, because the TPP has been negotiated behind closed doors. The secretive nature of the talks has led to staunch criticism within the US, as well as the other potential members, but it is important to remember that discretion is the modus operandi for most FTAs. Reconciling the complex interests and red lines of many different states requires a level of confidentiality that would be utterly impossible in an open forum. This fact has done little to placate opponents. Periodic reveals from WikiLeaks have also added fuel to the fervor of those who perceive the deal as detrimental to national sovereignty and a boon to big business. Ultimately, the validity of such criticisms is difficult to judge until a final draft is made available to the public.

What seems to be certain, however, is that the TPP has the potential to become a major force for economic integration throughout the region and it could even become a model for future FTAs.

Obama’s Gambit: The TPP as a Consolidating Force
Part of the appeal of the TPP is that it involves a diverse group of countries geographically, economically, developmentally, and culturally. For example, Brunei, Chile, Japan, and The United States all have very different economies and very different concerns when it comes to international trade. While this ambitious scale makes negotiations highly complex, it also has the potential to create an agreement that could become the norm for a wider free trade zone. APEC countries have long considered the idea of a region-wide FTA dubbed the Free Trade Area of the Asia-Pacific (FTAAP). However, the voluntary and nonbinding nature of APEC, as well as its inclusion of China and Russia, has prevented any serious headway on such a plan. The TPP, while more limited in geographic scope, still involves only APEC members and is strongly backed by the US. Therefore, the deal has the opportunity to lay the groundwork for expanded membership, set a model for future multilateral trade agreements, or even set conditions for future APEC membership for aspirant including India.

In addition to providing a future template for regional participation, the TPP has the potential to untangle the web of existing and developing trade agreements throughout the Asia-Pacific. The number of regional FTA agreements have surged over the last decade. Before 2000, only four major multilateral agreements among APEC members had been finalized, but at the time of this publication there are over 40, with numerous others in the works. The current skein of rules and regulations is making international commerce in the region increasingly cumbersome, and the trend is getting worse. There is hope that a successful TPP will begin to normalize trade deals in the region through its wide-reaching trade policies and the incentivization of internal liberalization and development. Additionally, expanded TPP membership in future years may make smaller, preexisting agreements obsolete by allowing for a simplification of international rules. Such a streamlining of trade regulations might become the most important facet of the deal by improving investment and market access throughout the region.
The rules set by the TPP could also serve as a precedent for future WTO dealings throughout the region and even make multilateral dealings beyond the Asia-Pacific more streamlined and accessible. The provisions proposed in the TPP regarding environmental protections, labor reforms, state-owned enterprises, and particularly the enforcement mechanisms included in the framework, could aid in the process of development and the monitoring of internal conditions of member states. This could lessen the reliance on the WTO and future development rounds for liberalization in the region.

Finally, the issue of rising Chinese influence in the region is prompting greater U.S. support of the trade deal. Tacit in the U.S. push for the TPP is the notion of keeping China contained. During the 2015 State of the Union Address, Obama framed issue as follows:

“…as we speak, China wants to write the rules for the world’s fastest-growing region. That would put our workers and our businesses at a disadvantage. Why would we let that happen? We should write those rules. We should level the playing field.”

Using a direct indictment of China to foster support for the deal is a bold gambit, and one that becomes riskier the longer the TPP awaits a signature. China is already making moves that undercut the appeal of the TPP for many APEC members. The establishment of the Asian Infrastructure Investment Bank (AIIB) has attracted contributions from Japan and other APEC members, as well as European allies (e.g. Britain, France, Germany, and Italy) despite American opposition. While the AIIB doesn’t threaten existing institutions such as the Asian Development Bank, its early success signifies China’s desire for a stronger leadership role in Asia. Additionally, China has announced plans to spearhead a competing multilateral trade agreement with its neighbors and has also signed trade agreements with Australia and South Korea this year. These Chinese initiatives could limit the appeal of the TPP for many Asian members as it is increasingly seen as the primary economic booster. Using the China card to drum up support for the TPP created a new consequence for failure; a public victory for China at U.S. expense. If the TPP isn’t concluded this year, it will roll over into a new president’s purview, which could affect ongoing timelines and push back negotiations for years, if not kill them outright.

Regardless of the geopolitical gamble, the exclusion of China and the fact that the TPP grew out of a smaller, preformed agreement provides a very real chance for it to overcome the roadblocks that plague multilateral trade agreements. While there is little hope of bringing China onboard into the initial agreement, if the U.S.

2010 TPP Summit
does manage to get the TPP signed, there is the possibility that it could check Chinese bilateral and multilateral efforts in the region and encourage China to accelerate its own economic, social, and environmental reforms. There is even talk of knitting China into the TPP framework in the future. As it stands, the deal's membership could be limited enough to actually pass while at the same time ambitious enough to change the game of Asia-Pacific trade.

**The Fine Print: What We Know & Why It’s Controversial**

Any multilateral agreement as large and comprehensive as the TPP is bound to face serious hurdles as different countries have different priorities based on their current stage of economic development, governing institutions, and internal social and protectionist pressures. This is the primary reason that the current negotiations have been held behind closed doors among trade ministers and representatives. Despite the hushed tactics of the negotiating countries, developing a mutually acceptable agreement has proven to be more difficult than expected. Many hoped that talks would be finalized by 2012, but almost three years later the negotiators are still grappling with various issues. Additionally, documents released by WikiLeaks have complicated the process by shedding light on several controversial proposals, notably the inclusion of an Investor-State Dispute Settlement (ISDS) mechanism that would allow private parties to sue sovereign states for breach of contract, as well as the development of a strict Intellectual Property right (IPR) enforcement regime.

The TPP is a plan that stretches far beyond eliminating tariffs and promoting greater trade access among members. It has been framed as a 21st century agreement that addresses several global, crosscutting issues that have emerged in recent decades. In order to create a functional and robust free trade zone the agreement is addressing the areas of labor reform and internal liberalization, environmental protections, and intellectual property laws. While these provisions are by no means the only major hurdles that the TPP faces, they are notable in that they deal with internal state reforms and compliance within the new multilateral framework.

Before getting into the specific provisions of the deal, it is important to establish how the TPP is expected to keep all these countries in line. Many multilateral organizations, from the WTO to the UN, have difficulties enforcing their rules on member states. Assurances that states will keep their promises are important for any trade deal because in order to promote new trade and investment, companies must feel like the rules won't change. The TPP seeks to address this problem by instituting ISDS. This enforcement mechanism operates by creating a forum for private investors to file suit against states outside that country's domestic legal system. For example, if a company signed a profit-sharing contract in a particular country, invested their money, and the state refused to uphold their end of the deal the investor could sue the state for damages in an international tribunal.

On the surface it seems like a fair solution, as it is possible that a foreign company might not receive fair treatment in local courts. However, there has been strong criticism that ISDS has the potential to undermine state sovereignty by taking decisions away from elected governments and putting them into the hands of foreign powers. The worry is that if a country passes a law affecting the profits of an international corporation, they could be sued, creating a potential conflict of interest. The recent tobacco law passed in Australia requiring cigarette packages to contain graphic, full-page health advisories is often cited as an example of an actionable offense in an ISDS tribunal. However, the outcry while not entirely unwarranted is likely an overreaction. ISDS provisions typically allow state regulation in the areas of public health, the environment, and even financial sectors preempting some of the more vehement arguments against it. According to the Department of Commerce the U.S. is already a member of 50 trade agreements involving ISDS and has never lost a case. That is not to say it is a non-issue, but we are unlikely to see a slew of new investor-state lawsuits challenging traditional sovereignty roles.

Outside of the ISDS, there are several provisions that have garnered criticism. One of the most controversial segments of the agreement deals with worker’s rights. Enforcing labor standards is a vital part of the TPP, but negotiating the scope of these protections and bringing developing members into compliance is no easy task. The U.S. has proposed
enforceable adherence to International Labor Organization (ILO) standards, a move that has likely been controversial with Vietnam and Brunei. Both countries have protested the proposed labor standards being subject to binding dispute settlement procedures, essentially arguing for some wiggle room. The U.S. and Vietnam are reportedly working on a labor action plan (LAP) that would set benchmarks for gradual reforms in order to bring the country into compliance. Even if Vietnam accedes to such standards, the provision may complicate future expansion of the TPP, especially in countries known for harsh and often unfair working conditions. Additional provisions dealing with fair competition are also making waves. Trade liberalization plans under the TPP seek to limit state-owned enterprises (SOE), a common trend in Vietnam. There are concerns that methods of financing, regulation, and transparency common to SOEs grant them an unfair advantage in an open market, but they are a well-entrenched part of the economy in Vietnam and rolling them back is no mean feat.

Environmental protections are also a part of the TPP. Current language is rumored to be leaning towards an international enforcement mechanism to ensure member states abide by domestic environmental regulations as well as any existing multilateral-environmental agreements (MEA). While taking action to curb climate change is a part of the negotiations, most provisions seemingly target more specific economic issues such as illegal logging, wildlife trafficking, and fishing subsidies. These issues are likely to be more approachable and enforceable than sweeping climate reforms, and proponents argue that any progress could act as a springboard for more comprehensive environmental changes in the future. Regardless, the TPP continues to face criticism on these provisions. Environmental organizations have spoken out that the TPP doesn’t go far enough when it comes to preventing climate change and conserving natural resources. There is also fear that the plan may make things worse by effectively giving carte blanche to international corporations. In addition, a lack of strong enforcement mechanisms for environmental violations has been brought to light through recent leaks. Short of the more stringent dispute settlement mechanisms reportedly set to deal with trade violations, the environmental chapter proposes that members merely reaffirm their commitment to standing MEAs without significant consequence for violations.

Perhaps the most controversial proposals in the agreement deal with intellectual property rights (IPR). The U.S. in particular is pushing for much more stringent restrictions on the reproduction or derivation of intellectual properties. This will of course mean a large policy and enforcement shift in developing countries such as Vietnam and Malaysia, but the controversy goes deeper than that. Documents released via WikiLeaks reveal plans for strict language regarding digital copyright and pharmaceutical protections in particular. The application of copyright to digital media is a difficult task in terms of enforcement and would likely stretch the boundaries of any enforcement scheme. The U.S. is purported to be pushing criminal penalties for willful copyright infringement on a commercial scale and could even hold Internet service providers liable in certain cases. Many members are rumored to have issues with the severity of the language, which goes beyond past FTAs.

There are also concerns that the pharmaceutical IP protections may hinder access to drugs by preventing the entry of generics onto the market. The U.S. is advocating for additional protections for new and existing pharmaceutical products, essentially limiting availability and distribution. This is a serious concern for health care accessibility in certain regions. Proponents of increased protections argue that generics and biosimilars tend to be released before the completion of clinical trials, and undermine the time and investment of pharmaceutical companies. There is also talk of extending existing copyright periods, which would restrict substitutes (e.g. inexpensive generics) from entering the wider drug market and potentially make drugs more expensive for developing nations.

There are, of course, arguments that such protections are necessary to incentivize pharmaceutical companies into investing more in R&D and entering new markets, however the public outcry against the proposed IP language has been stark. Opposition to these anticipated IP provisions is exacerbated by the enforcement framework included within the TPP, which could allow private companies to sue national governments that they believe are infringing upon copyright laws, a move that has been criticized as a violation of sovereignty norms.
Beyond The Controversy: Why the TPP is Important

While controversies surround the TPP negotiations, none of these issues have been sufficient to sink the deal, and there is still real optimism of reaching a final agreement. The recent passage of trade promotion authority, also known as fast track, by the U.S. Congress cleared a major hurdle, but there are many opportunities for failure. Due to the progressive nature of the plan combined with traditional speed bumps, such as the opening of agricultural sectors and other typically protected industries, the evolution of the agreement has been slow and measured. The pace and on-going controversies illustrate that the TPP is, like all trade agreements, a deal built on compromise. Additionally, the public outcry over issues such as international dispute mechanisms and the unprecedented extent of the IP provisions endangers the deal via internal pressures within all member states. Even if the U.S. Congress manages to pass the deal when it finally comes to light, similar local restrictions must be overcome by the other potential signatories as well. Reconciling such domestic pressures and still producing an impactful agreement is a monumental task, but one that is closely approaching the finish line.

For the time being the TPP is still in the works, and because of the discrete nature of the negotiation proceedings it is difficult to appraise how close the member states are from a definitive agreement. What is certain, however, is that it is important for the future of the region, and not just because of its provisions. President Obama has staked his legacy on the deal, and its success or failure may very well determine the future course of American involvement in the Asia-Pacific. A failure could signify that the United States no longer has the strength to shape events in the region, a power vacuum that China will seek to fill. On the other hand, a signed TPP with the teeth to enforce its mandates could be a game changer for the world’s largest trade zone. Beyond simply improving trade relations among members, it has the potential to improve environmental and labor standards while encouraging foreign investment throughout the world’s largest trade zone, cementing the U.S. as the prime economic mover in region.

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Anti-TPP protest in New Zealand