

TPP-11: What's in it for Japan?

In early March 2018, 11 nations¹ signed a revised and less stringent version of the Trans-Pacific Partnership (TPP) which was rebranded as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) aimed at lowering tariffs, stimulating the spread of foreign investment, technical know-how and innovation leading to further job creation and business opportunities, and deregulating and standardizing trade practices among the signatories. The 11 countries which currently make up the CPTPP contribute approximately 11% and 15% of the global economy and global trade respectively². While the potential impact on global trade would undoubtedly be much higher had the United States chose to also be signatory to the original TPP, the CPTPP has been designed to allow for other countries to join in the future should they so desire.

After the withdraw of the US from the original TPP negotiations, Japan sought to lead the way in pushing a new agreement forward in order to expand trade and investment among participating nations. Japan lags behind most OECD countries in terms of the contribution of trade to the economy and the amount of Foreign Direct Investment in Japan is less than 10% of the OECD average. At the same time, Japan's corporate tax rate is among the top 20% of OECD nations³, which more than likely has hampered more overseas investment from heading in Japan's direction.

Japan saw that by asserting itself in terms of establishing a less rigid regional free trade agreement from the ashes of the TPP, a free trade agreement could be reached among a plurality of nations which could later be used in future free trade negotiations such as the Regional Comprehensive Economic Partnership (RCEP) and used as a negotiation tool in

¹Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam

²<https://www.forbes.com/sites/paullaudicina/2018/02/06/will-japans-open-for-business-strategy-work/#2f7410983552> (Will Japan's Open For Business Strategy Work?)

³Ibid

the case that other nations wished to join at a later date. RCEP is a free trade agreement currently being negotiated between the 10 ASEAN members and six other countries (Australia, China, India, Japan, South Korea and New Zealand which constitute the ASEAN Plus Six grouping) having existing free trade agreements with ASEAN countries. Negotiations began in November 2012 and currently there are numerous roadblocks hindering the development of consensus among the participating nations. While the RCEP is mainly focused on the reduction of tariffs among the 16 nations involved in the negotiations, there are numerous aspects relating to the protection of IPR and combating the proliferation of counterfeits. To this regard, the TPP-11 serves as a foundation which will hopefully lead to the eventual ratification of the RCEP.

In regard to how the TPP-11 free trade agreement will impact Japan, there will be numerous changes in both import and export practices. Tariff reduction for items being brought into Japan had been sought by Japan's major trading partners for decades. The CPTPP will lower tariffs on beef, cereal, and grain, and eliminate tariffs on cotton, wool, seafood, wine, industrially-produced goods and other items being imported⁴ into Japan. Numerous sectors, such as telecommunications, digital trade and financial fields will see deregulation in order to attract more international investment. This deregulation will occur in all CPTPP member states and will also allow Japan to more freely export its goods and services and obtain easier access to newly developed technology. This should be of benefit, not only for larger Japanese corporations seeking to establish or strengthen their overseas networks, but also to Japanese Small and Medium-sized Enterprises (SMEs)⁵ which owing to financial constraints are more risk adverse in such situations.

⁴http://trademinister.gov.au/releases/Pages/2018/sc_mr_180308.aspx (A new Trans-Pacific Partnership (TPP) Agreement)

⁵https://www.rieti.go.jp/en/columns/s15_0012.html (How will the TPP Change the Japanese Economy?)

The powerful agricultural lobby in Japan has actively campaigned against the reduction or elimination of tariffs imposed on imported agricultural products, particularly dairy products and rice. However, such reductions or the elimination of tariffs will obviously result in more choices for the consumer and it is anticipated that an influx of cheaper agricultural products will increase competition and stimulate the domestic agricultural industries to develop more economical methods of production.

CPTPP IP Highlights

While the new free trade agreement does not provide the depth and range of IP protection and enforcement originally sought by the more technologically advanced nations involved in TPP negotiations, some provisions were brought over to the CPTPP.

The CPTPP eliminated provisions present in the original TPP regarding patent term extension to compensate for delays in the examination and approval of applications and provisions regarding copyright and IP rights enforcement which had become contentious points for the less-developed member states. Rules governing data protection for biologic drugs and other pharmaceuticals were also removed from the CPTPP⁶. In lieu of the US dropping out from the original TPP negotiations, Japan and Korea both agreed with some reluctance to shelve requests for stronger IP regulations, especially with regards to the extension of copyright protection, in order that many countries who would become signatories thereto would not have to undergo lengthy amendments to their existing IP laws in order to comply with those established by the CPTPP.

The CPTPP provides that after the public disclosure of an invention, an inventor is permitted a one year "grace period" in which to file a patent application. This is seen as being

⁶<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptppg/sectors-secteurs/ip-pi.aspx?lang=eng> (What does the CPTPP mean for intellectual property?)

largely beneficial to SMEs and universities. Note that, countries which are not signatories to the CPTPP may have different grace periods or conditions under which a grace period may be requested.

Provisions regarding patent linkage in terms of obtaining marketing approval for a new drug (often a generic form of an innovator drug) based on bioequivalence also are provided in the CPTPP. According to the provisions, a patentee of an innovator drug will be notified when another applicant seeks to use the clinical trial data of the innovator drug to show bioequivalence.

Future expansion of CPTPP-11

Japan and other nations certainly desire for the United States to eventually enter into the current agreement. This is due to the considerable economic clout and market access opportunities that the US brings into a trade agreement. It also would serve as a means for restraining the need to acquiesce to Chinese demands that the standards imposed by the CPTPP be weakened in exchange for China eventually entering into the CPTPP agreement. Granted that the United States also has its own vested interests and more than likely would demand that, for example, the CPTPP regulations on how disputes are to be handled and how data protection regarding pharmaceuticals is performed be amended, China is widely seen as not being a free-market economy which is a critical aspect for becoming a CPTPP member state. In the future, should the US decide to enter into another free trade agreement with Japan, as one negotiation strategy, Japan could seek concessions regarding the lowering of automobile tariffs in the US to Japanese imports or simply request that the US to also become signatory to the CPTPP.