



Current Status, Progress and Difficulties of the TPP Negotiations and its Implications for Non-members

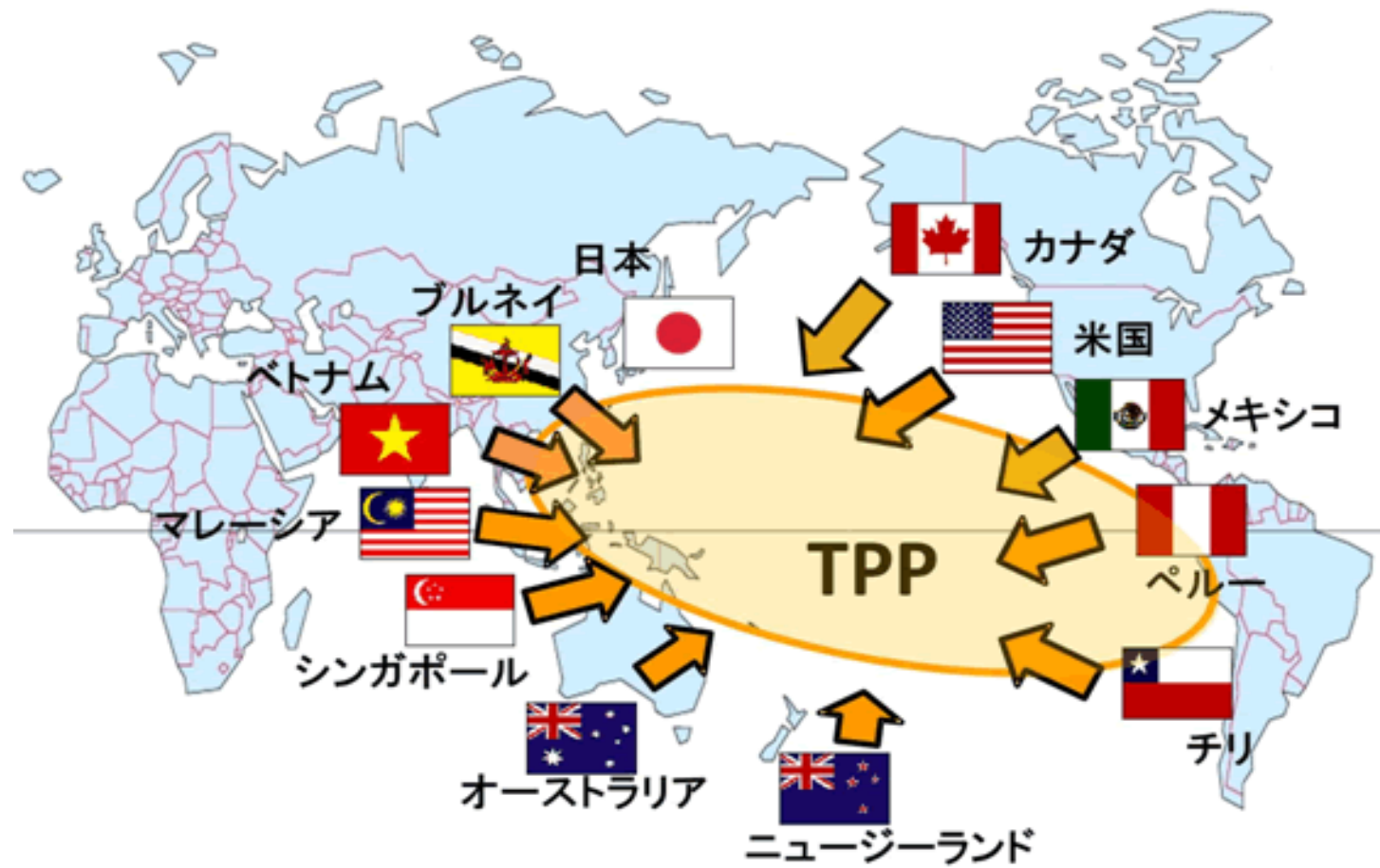
2014 Annual Conference on the Development
of International Economic and Trade Law –
Roundtable on Mega RTAs

March 8, 2014

Junji Nakagawa (University of Tokyo)

- 
-
1. Current status of the TPP negotiations
 2. Major contested issues
 3. Implications for non-members

1. Current status of the TPP negotiations





Chronology of TPP negotiations

March 2010	Round 1(Melbourne)
June 2010	Round 2(San Francisco)
October 2010	Round 3(Brunei)
December 2010	Round 4(Auckland) Malaysia joined.
February 2011	Round 5(Santiago)
Mar/Apr 2011	Round 6(Singapore)
June 2011	Round 7(Hoh Chi Minh City)
September 2011	Round 8(Chicago)
October 2011	Round 9(Lima)
November 2011	TPP leaders announced on the broad outline of the agreement.
December 2011	Round 10(Kuala Lumpur)
March 2012	Round 11(Melbourne)
May 2012	Round 12(Dallas)
July 2012	Round 13(San Diego)
September 2012	Round 14(Leesburg)
December 2012	Round 15(Auckland) Canada and Mexico joined.
March 2013	Round 16(Singapore)
May 2013	Round 17(Lima)
July 2013	Round 18(Kota Kinabalu) Japan joined.
August 2013	Round 19(Brunei)
October 2013	TPP leaders announced they were on track to complete negotiations.
November 2013	Korea expressed to join the TPP
December 2013	TPP trade ministers meeting (Singapore) identified potential “landing zones” for the majority of key outstanding issues
9 January 2014	TPA Bill submitted to the U.S. Congress
February 2014	TPP trade ministers meeting (Singapore)



Forthcoming events

February 2014	TPP Trade ministers' meeting (Singapore)
Late April 2014	President Obama will visit Japan and Malaysia
17-18 May 2014	APEC Trade ministers' meeting (Qindao)
4 November 2014	U.S. Midterm elections
11-12 November 2014	APEC Leaders' Meeting (Beijing)

For the Obama administration to “sell” TPP to the Congress before the midterm elections, it will have to reach broad agreement at President’s visit to Japan and Malaysia in late April, or, at the Trade ministers’ meeting in May, at the latest.

If the TPP members fail to reach broad agreement by then, the negotiation might drift, as it lose definite leadership and guidance.



2. Major contested issues

(1) Subject matter of the TPP

A. Market access

A-1	Trade in goods (manufactured products/textile & apparel/agriculture)
A-2	Services (cross-border services/financial services/telecommunication/movement of business persons)
A-3	Government procurement
A-4	Investment

B. Border measures

B-1	Rules of origin
B-2	Trade facilitation
B-3	Trade remedies (anti-dumping/countervailing measures/safeguards)

C. Domestic regulation

C-1	SPS
C-2	TBT
C-3	Intellectual property rights
C-4	Competition policy
C-5	E-commerce
C-6	Investment
C-7	Environment
C-8	Labor
C-9	Cross-cutting issues (regulatory coherence/business facilitation/utilization by SMEs/development)



Two documents leaked in December 2013 explain major contested issues and positions of the members as of November 2013.

- 1) TPP: Country Positions (6 November 2013). Available at [<https://wikileaks.org/IMF/pdf/tpp-salt-lake-positions.pdf>]
- 2) TPP state of play after Salt Lake City 19-24 November 2013 round of negotiations. Available at [<http://wikileaks.org/IMF/pdf/tpp-salt-lake-extracts-.pdf>]



Outstanding issues of the TPP negotiations

A. Market access

- | | |
|-----|--|
| A-1 | Trade in goods (manufactured goods/textile & apparel/agriculture) |
| A-2 | Services (cross-border services/financial services/ telecommunication / movement of business persons) |
| A-3 | Government procurement |
| A-4 | Investment |

B. Border measures

- | | |
|-----|--|
| B-1 | Rules of origin (yarn forward rule) |
| B-2 | Trade facilitation |
| B-3 | Trade remedies (anti-dumping/countervailing measures/safeguards) |

C. Domestic regulation

- | | |
|-----|---|
| C-1 | SPS |
| C-2 | TBT |
| C-3 | Intellectual property rights |
| C-4 | Competition policy |
| C-5 | E-commerce |
| C-6 | Investment |
| C-7 | Environment |
| C-8 | Labor |
| C-9 | Cross-cutting issues (regulatory coherence/business facilitation/utilization by SMEs/development) |



A-1 Market access - Any country has sensitive products and sectors.

Tariff peaks of TPP members

Australia	chocolate(16~17%), wine(15%), tobacco products(10~25%), rubber products(0~55%), leather(0~37%), cotton textiles(23~40%), apparel products(0~55%), home refrigerators(47.5%), passenger cars(40%)
Brunei	chicken(50%), film & printing paper(20~40%), wood products(20~40%), machinery(20~40%), electric appliances(20~40%), auto parts(40%)
Canada	beef(26.5%), dairy products(6.5~11.2%), wheat(49~76.5%), barley(94.7%), apparel products(9~18%)
Chile	dairy products(25~31.5%), wheat(25~31.5%), sugar(98%)
Japan	beef(50%), pork(361~482yen/kg), milk(21.3%+54yen/kg~25.5%+1023yen/kg), butter(29.8%+985yen~1059yen/kg), cheese(29.8~40%), wheat(55yen/kg), barley(39yen/kg), rice(341yen/kg), sugar(35.3yen~106.2yen/kg), leather(0~30%), footwear(30% or 4300yen/pair, whichever is higher)
Malaysia	plastic & rubber(5~40%), steel plates(30%), passenger cars(unbound)
Mexico	spirits(45%), cigarettes(67.5%), apparel products(35%)
New Zealand	leather(11.5~30%), apparel products(10~45%), footwear(30~45%)
Peru	beef(30%), chicken(30%), rice(30~68%)
U.S.	dairy products(10~25%), sugar(4~12.2%), apparel products(2.8~32%), trucks(25%)
Vietnam	sugar(85~100%), spirits(45%), wine(50~55%), tobacco products(90~135%), steel products(5~35%), passenger cars(70%), motorcycles(75%)

(Source:WTO, Current Situation of Schedules of WTO Members, available at
[http://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm]



C-3 Intellectual property rights – TRIPS+

- US and Japan are insisting on a number of TRIPS-plus rules on IPRs, and other members are opposing them.
- One example is the terms of data exclusivity, i.e., the period of time for which an original pharmaceutical patent holder is permitted to withhold test data used to prove the safety of a drug from generic manufacturers for the approval of chemically equivalent drugs. US is insisting on five years for conventional drugs and 12 years for biologic drugs.



C-4 Competition policy – Disciplining SOEs

- US is trying to introduce regulations on financial/regulatory preference to state-owned enterprises (SOEs), so that competitive neutrality between SOEs and foreign private firms may be achieved.

Countries with a number of SOEs (e.g. Viet Nam, Malaysia) resist against stringent discipline on SOEs.

A compromise might be made by making **a list of non-conforming measures/SOEs** in the Annexes to the chapter on competition policy, where each member enlist SOEs and preferences thereto that are exempt from the general rules of the TPP controlling SOEs.



C-6 Investment – ISDS

- Australia has been opposing against **the investor-state dispute settlement arbitration** (ISDS).
- However, it is reported that the new government takes a more flexible stance toward this issue.



C-7 Environment – No more fisheries subsidies?

- Japan opposes a general prohibition of fisheries subsidies that entail overexploitation.
- However, it is reported that TPP members agreed on maintaining fisheries subsidies, on condition that the member implement conservation programs.



3. Implications for non-members

1) Accession to the TPP will be similar to accession to the WTO.

Acceding country will have to:

- a) negotiate market access negotiations (goods, services, government procurement, investment) with the TPP members, and
- b) accept the whole TPP Agreement in a single undertaking.

2) It will have to go through tough negotiations, but it'll worth it.

- TPP will become a model of 21st century trade agreement, reflecting the needs of globalizing supply chains (GSC).
- By joining the TPP, a non-member will be able to adjust its laws and regulations to meet the needs of GSC.



Thank you so much for your attention!

Contact: nakagawa@iss.u-tokyo.ac.jp