

# **TPP Progress: Sectoral Issues**

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# TPP State of Play

- ▶ **October 2013 set as target date for completion**
  - ▶ **15<sup>th</sup> negotiating round under way this week in Auckland**
    - **Some issues said to be closed out, others remain difficult**
    - **No breakthroughs or major developments expected**
    - **More detailed work at negotiating group level**
    - **Contentious issues not ready for referral to higher levels for decision**
    - **Looking for signs of post-election flexibility from Obama Administration**
    - **Canada and Mexico participate for first time**
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# Difficult Issues in TPP – Some Key Considerations

- ▶ **important to distinguish in negotiating positions between “high quality” best practice elements and narrow mercantilist interests**
  - “push back” against the latter is crucially important
  - often seems to be US v. the rest  
(*examples: intellectual property, E-commerce*)
- ▶ **defending integrity of domestic policy processes in areas such as health, environment**  
(*examples: ISDS, drug pricing and reimbursement programmes*)
- ▶ **accommodating interests and needs of developing countries**  
(*exemplar: Vietnam*)
- ▶ **avoiding “one size fits all” approaches**  
(*examples: SOEs, express delivery*)
- ▶ **facilitation v. forestalling of future membership expansion**  
(*key question: future participation of China? also Korea, Indonesia*)

# Goods Issues - 1

- ▶ **No change in structural approaches**
  - **US**
    - **Refusing to re-open negotiations with existing FTA partners**
      - e.g. no movement on sugar access for Australia
    - **Negotiating bilaterally with other participants**
    - **Issues of parity of access not addressed so far**
      - New issues arise with entry of Canada and Mexico
  - **Most other participants prefer plurilateral approach to market access schedules**
  
- ▶ **No progress as yet in addressing sensitive market access ambitions of US partners**
  - **Textiles and apparel (Vietnam)**
  - **Dairy products (New Zealand)**
    - **Well-known Canadian sensitivity on supply management inevitably adds further dimension to difficulty**

# Goods Issues - 2

## ▶ Rules of Origin

- Complex and difficult negotiation
- Key difficulties over
  - Extent of deviation from US “template”
  - Comprehensiveness of cumulation provisions

## ▶ SPS

- Innovative proposals on rapid response
- Resistance by US and Australia to enforceability proposals

## ▶ Customs issues

- Express lane
  - De minimis provisions
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# Goods Issues - 3

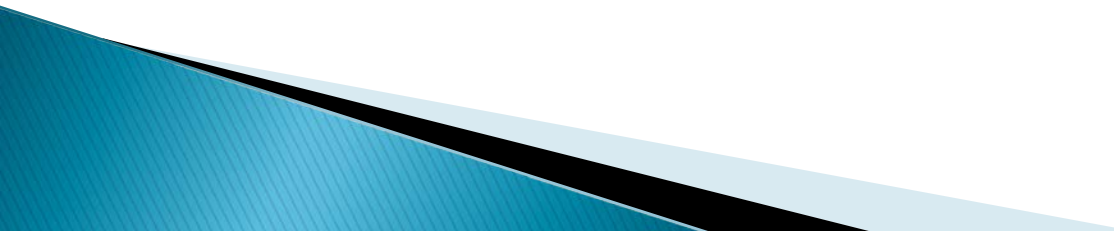
## ▶ **Agriculture**

- **Australia's proposal for provisions on**
  - **Export competition**
  - **Export financing**
  - **Agricultural export subsidies**
  - **Agricultural export subsidies**
- **Linked to Australia's response to US proposal on SOEs**
- **Closely related to 2008 Doha proposals**
- **US position is to address these issues only in WTO**

## ▶ **Geographic Indications (GIs)**

- **Remains contentious**
- **No breakthrough yet**

# Services

- ▶ **Little information available on progress**
  - ▶ **Following “NAFTA approach” rather than “GATS approach”**
    - “negative list” approach agreed
    - very lengthy negative lists in some initial proposals
  - ▶ **Views of independent analysts e.g. PECC**
    - Services a key area for potential gains
    - Innovative approaches need to realise potential gains
  - ▶ **Little indication as yet of innovative approaches**
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# Investment

- ▶ **Key controversy is investor state dispute settlement (ISDS)**
- ▶ **Australia insists on exemption from ISDS**
- ▶ **Concerns**
  - **Foreign investors advantaged over domestic investors**
  - **Chilling effect on domestic legislation**
  - **Performance of tribunals**
    - **Institutional bias**
    - **Conflicts of interest**
    - **Excessive costs and awards**
    - **Lack of transparency**
    - **Non-use of precedents → consistency and jurisdictional issues**
- ▶ **Approaches to mitigating risks**
  - **Careful design of provisions**
    - **Definition of terms e.g. investment, indirect expropriation**
    - **Provisions requiring greater transparency and certainty of process**
    - **Require prior exhaustion of domestic legal channels**
    - **Clear definition of exclusions to avoid unintended actions**



# Pharmaceuticals

- ▶ **Evaluation, Pricing and Subsidy Programmes**  
**e.g. PBS (Australia), Pharmac (NZ)**
  - **Clash of interests**
    - **US concedes (?) programmes can continue but insist on stronger “disciplines”**
    - **NZ insists drug prices must not rise as a result**
  - **US may need to consider implications of Affordable Care Act**
- ▶ **“Access to Medicines”**
  - **Provisions aimed at delaying introduction of generic medicines**
    - **Data exclusivity, patent linkage, patent extensions**
    - **“May 10<sup>th</sup> Agreement approach v. KORUS FTA provisions**
    - **TPP: controversial US TEAM (Trade Enhancing Access to Medicines) proposal**

# E-Commerce

- ▶ **Key issue: elimination of impediments to electronic transactions**
- ▶ **Main TPP controversy: proposal for enforceable provisions to prohibit blocking of cross-border data flows via the internet**
- ▶ **Objections: conflicts with**
  - **Privacy laws (current or proposed) of some participants**
    - **Lack of confidence in private sector-administered privacy safeguards**
  - **Provisions requiring domestic location of servers**
    - **Part of privacy regime in some participants**
    - **Aimed to encourage domestic computer service activities in others**
- ▶ **Alternative approach: allow restrictions on free flow of data provided they are shown not to be disguised trade barriers**

# State Owned Enterprises (SOEs)

- ▶ **US proposal**
- ▶ **Others “studying” implications (Singapore, Malaysia, Vietnam)**
- ▶ **Considerations**
  - **Imposition of “one size fits all” model unlikely to be accepted**
  - **Acknowledged need for SOE reform in Vietnam**
  - **Possibility of “filling the gaps” in existing international trade rules**
    - **“regulatory favouritism” should be addressed by national treatment**
      - **Does not apply to non-scheduled services in WTO**
      - **Government financial support should be addressed by subsidy rules**
        - **Do not apply to services in WTO**
        - **Case for supporting subsidy rules by transparency provisions in SOE case**
      - **GPA has the only WTO provisions addressing discrimination in government procurement**
        - **Many TPP participants are not members of GPA**

# Concluding Remarks

- ▶ **Critical issues for TPP as possible model for FTAAP remain to be resolved**
  - ▶ **Vital to get the outcome of these issues “right”**
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