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Trans-Pacific Partnership Agreement Reached

After a marathon weekend negotiating session in Atlanta, trade ministers from the United States and eleven other countries reached a final agreement on the terms and text of the Trans-Pacific Partnership (“**TPP**” or the “**Agreement**”). The TPP is a multi-faceted trade agreement among Pacific Rim nations that account for approximately 40 percent of world GDP. In its “[Fact Sheet](#)” the White House states that the TPP reduces or eliminates 18,000 different taxes on Made-in-America Exports, most notably on automotive, communication technology and agricultural products. The White House also stresses that the Agreement expands fully-enforceable labor rights and provides the strongest environmental protections of any trade agreement in history.

The full text of the Agreement is not yet available for analysis, but the Office of the U.S. Trade Representative (“**USTR**”) has issued a “[Summary](#)” with highlights.

According to USTR, the TPP is marked by “five defining features:”

- **Comprehensive Market Access.** The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment.
- **Regional Approach to Commitments.** The TPP facilitates the development of production and supply chains.
- **Addressing New Trade Challenges.** The TPP addresses new issues, including the development of the digital economy, and the role of state-owned enterprises in the global economy.
- **Inclusive Trade.** The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade. This includes commitments to help small- and medium-sized businesses understand the Agreement as well as steps to ensure that all parties are able to meet the commitments in the Agreement and take full advantage of its benefits.
- **Platform for Regional Integration.** The TPP is intended as a platform for regional economic integration and designed to include additional economies across the Asia-Pacific region.

The TPP is broad in scope and includes 30 chapters covering trade and trade-related issues. It includes not just trade in goods and services, but also customs and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade, trade remedies, investment, electronic commerce, government procurement, intellectual property, labor and environment. There are also provisions addressing dispute settlement, exceptions, and institutional matters.

Owing to the comprehensiveness and complexity of the TPP, even the USTR Summary is lengthy. Below is a further condensation, setting forth some of the high points described by USTR with respect to each of the 30 chapters. After reviewing the text of the Agreement itself, we will provide analysis of those chapters of greatest significance to our clients.

1. Initial Provisions and General Definitions

The Initial Provisions and General Definitions chapter provides definitions and ensures the consistent application of the TPP with other international trade agreements and institutions, particularly the World Trade Organization (“WTO”).

2. Trade in Goods

Trans-Pacific Partnership Parties (“TPP Parties”) agree to eliminate and reduce tariffs and non-tariff barriers on industrial goods, and to eliminate or reduce tariffs and other restrictive policies on agricultural goods.

3. Textiles and Apparel

TPP Parties agree to eliminate tariffs on textiles and apparel. Most tariffs will be eliminated immediately, although tariffs on some sensitive products will be eliminated over longer timeframes as agreed by the TPP Parties.

4. Rules of Origin

To provide simple rules of origin, promote regional supply chains, and help ensure the TPP countries rather than non-participants are the primary beneficiaries of the Agreement, the 12 Parties have agreed on a single set of rules of origin that define whether a particular good is “originating” and therefore eligible to receive TPP preferential tariff benefits. The product-specific rules of origin are attached to the text of the Agreement.

5. Customs Administration and Trade Facilitation

Complementing their WTO efforts to facilitate trade, the TPP Parties have agreed on rules to enhance the facilitation of trade, improve transparency in customs procedures, and ensure integrity in customs administration.

6. Sanitary and Phytosanitary (“SPS”) Measures

The TPP builds on WTO SPS rules for identifying and managing risks in a manner that is no more trade restrictive than necessary. TPP Parties agree to allow the public to comment on proposed SPS measures to inform their decision-making, and to ensure traders understand the rules they will need to follow.

7. Technical Barriers to Trade (TBT)

The TPP Parties have agreed on transparent, non-discriminatory rules for developing technical regulations, standards and conformity assessment procedures, while preserving TPP Parties’ ability to fulfill legitimate objectives. They agree to cooperate to ensure that technical regulations and standards do not create unnecessary barriers to trade.

8. Trade Remedies

The Trade Remedies chapter promotes transparency and due process in trade remedy proceedings through recognition of best practices, but does not affect the TPP Parties’ rights and obligations under the WTO.

9. Investment

The Investment chapter provides for neutral and transparent international arbitration of investment disputes, with strong safeguards to prevent abusive and frivolous claims and ensure the right of governments to regulate in the public interest, including on health, safety, and environmental protection.

10. Cross-Border Trade in Services

TPP includes core obligations found in the WTO and other trade agreements: national treatment; most-favoured nation treatment; market access, which provides that no TPP country may impose quantitative restrictions on the supply of services or require a specific type of legal entity or joint venture; and local presence, which means that no country may require a supplier from another country to establish an office or affiliate, or to be resident, in its territory in order to supply a service.

11. Financial Services

The TPP Financial Services chapter provides cross-border and investment market access opportunities, while ensuring that Parties will retain the ability to regulate financial markets and institutions and to take emergency measures in the event of crisis.

12. Temporary Entry for Business Persons

The Temporary Entry for Business Persons chapter encourages authorities of TPP Parties to provide information on applications for temporary entry, to ensure that application fees are reasonable, and to make decisions on applications and inform applicants of decisions as quickly as possible.

13. Telecommunications

TPP Parties commit to ensure that major telecommunications services suppliers in their territory provide interconnection, leased circuit services, co-location, and access to poles and other facilities under reasonable terms and conditions and in a timely manner. They also commit, where a license is required, to ensure transparency in regulatory processes and that regulations do not generally discriminate against specific technologies.

14. Electronic Commerce

TPP Parties commit to ensuring free flow of the global information and data, subject to legitimate public policy objectives such as personal information protection. The 12 Parties also agree not to require that TPP companies build data centers to store data as a condition for operating in a TPP market, and, in addition, that source code of software is not required to be transferred or accessed.

15. Government Procurement

In the Government Procurement chapter, TPP Parties commit to core disciplines of national treatment and non-discrimination. They also agree to publish relevant information in a timely manner, to allow sufficient time for suppliers to obtain the tender documentation and submit a bid, to treat tenders fairly and impartially, and to maintain confidentiality of tenders. In addition, the Parties agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. Each Party agrees to a positive list of entities and activities that are covered by the chapter, which are listed in annexes.

16. Competition Policy

TPP Parties agree to adopt or maintain national competition laws that proscribe anticompetitive business conduct and work to apply these laws to all commercial activities in their territories.

17. State-Owned Enterprises (“SOEs”) and Designated Monopolies

Parties agree to ensure that their SOEs make commercial purchases and sales on the basis of commercial considerations, except when doing so would be inconsistent with any mandate under which an SOE is operating

that would require it to provide public services. They also agree to ensure that their SOEs or designated monopolies do not discriminate against the enterprises, goods, and services of other Parties.

18. Intellectual Property

The Intellectual Property chapter establishes standards for patents, based on the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and international best practices. On trademarks, it provides protections of brand names and other signs that businesses and individuals use to distinguish their products in the marketplace. In addition, the chapter contains pharmaceutical-related provisions that facilitate both the development of innovative, life-saving medicines and the availability of generic medicines, taking into account the time that various Parties may need to meet these standards.

19. Labor

TPP Parties agree to adopt and maintain in their laws and practices the fundamental labor rights as recognized in the International Labour Organization (ILO) 1998 Declaration, namely freedom of association and the right to collective bargaining; elimination of forced labor; abolition of child labor and a prohibition on the worst forms of child labor; and elimination of discrimination in employment. They also agree to have laws governing minimum wages, hours of work, and occupational safety and health.

20. Environment

The 12 Parties agree to effectively enforce their environmental laws; and not to weaken environmental laws in order to encourage trade or investment.

21. Cooperation and Capacity Building

The Cooperation and Capacity Building chapter establishes a Committee on Cooperation and Capacity Building to identify and review areas for potential cooperative and capacity building efforts.

22. Competitiveness and Business Facilitation

The Competitiveness and Business Facilitation chapter creates formal mechanisms to review the impact of the TPP on competitiveness of the Parties, through dialogues among governments and between government, business, and civil society, with a particular focus on deepening regional supply chains, to assess progress, take advantage of new opportunities, and address any challenges that may emerge once the TPP is in force.

23. Development

The Development chapter includes three specific areas to be considered for collaborative work once TPP enters into force for each Party: (1) broad-based economic growth, including sustainable development, poverty reduction, and promotion of small businesses; (2) women and economic growth, including helping women build capacity and skill, enhancing women's access to markets, obtaining technology and financing, establishing women's leadership networks, and identifying best practices in workplace flexibility; and (3) education, science and technology, research, and innovation.

24. Small- and Medium-Sized Enterprises

The Small- and Medium-Sized Enterprise chapter includes commitments by each TPP Party to create a user-friendly website targeted at small- and medium-sized enterprise users to provide easily accessible information on the TPP and ways small firms can take advantage of it, including descriptions of the provisions of TPP relevant to small- and medium-sized enterprises; regulations and procedures concerning intellectual property rights; foreign investment regulations; business registration procedures; employment regulations; and taxation information.

25. Regulatory Coherence

The Regulatory Coherence chapter aims to facilitate regulatory coherence in each TPP country by promoting mechanisms for effective interagency consultation and coordination for agencies. It encourages widely-accepted good regulatory practices, such as impact assessments of proposed regulatory measures, communication of the grounds for the selection of chosen regulatory alternatives and the nature of the regulation being introduced.

26. Transparency and Anti-Corruption

TPP Parties need to ensure that their laws, regulations, and administrative rulings of general application with respect to any matter covered by the TPP are publicly available and that, to the extent possible, regulations that are likely to affect trade or investment between the Parties are subject to notice and comment.

27. Administrative and Institutional Provisions

The Administrative and Institutional Provisions chapter sets out the institutional framework by which the Parties will assess and guide implementation or operation of the TPP, in particular by establishing the Trans-Pacific Partnership Commission, composed of ministers or senior level officials, to oversee the implementation or operation of the Agreement and guide its future evolution.

28. Dispute Settlement

Where disputes are not resolved through negotiation, the TPP Parties aim to have disputes resolved through impartial, unbiased panels. The public in each TPP Party will be able to follow proceedings, since submissions made in disputes will be made available to the public, hearings will be open to the public unless the disputing Parties otherwise agree, and the final report presented by panels will also be made available to the public.

29. Exceptions

The Exceptions chapter ensures that flexibilities are available to all TPP Parties that guarantee full rights to regulate in the public interest, including for a Party's essential security interest and other public welfare reasons.

30. Final Provisions

The Final Provisions chapter defines the way the TPP will enter into force, the way in which it can be amended, the rules that establish the process for other states or separate customs territories to join the TPP in the future, and the means by which Parties can withdraw.

If you should have a question relating the TPP or any global trade issue please do not hesitate to contact any of the lawyers referenced below.

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