



The Trans-Pacific Partnership: What's on the Horizon

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Definitions

- **TPA: Trade Promotion Authority (“Fast Track”)**
Legislation by which:
 - Congress defines trade negotiating objectives;
 - President negotiates the agreement; and
 - Congress gives final agreement an up or down vote without amendment.
- **TPP: Trans-Pacific Partnership**
- **Party: A Country joining the TPP Agreement**

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The Trans-Pacific Partnership (TPP)

The TPP is a trade agreement among twelve Pacific Rim countries signed on February 4, 2016 in Auckland, New Zealand after 7 years of negotiations.



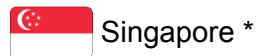
- The TPP will create the world's largest free-trade zone. The countries within its scope account for 40 percent of the world's economic output.
- The Agreement will not enter into force until ratified by the respective governments.

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TPP Parties



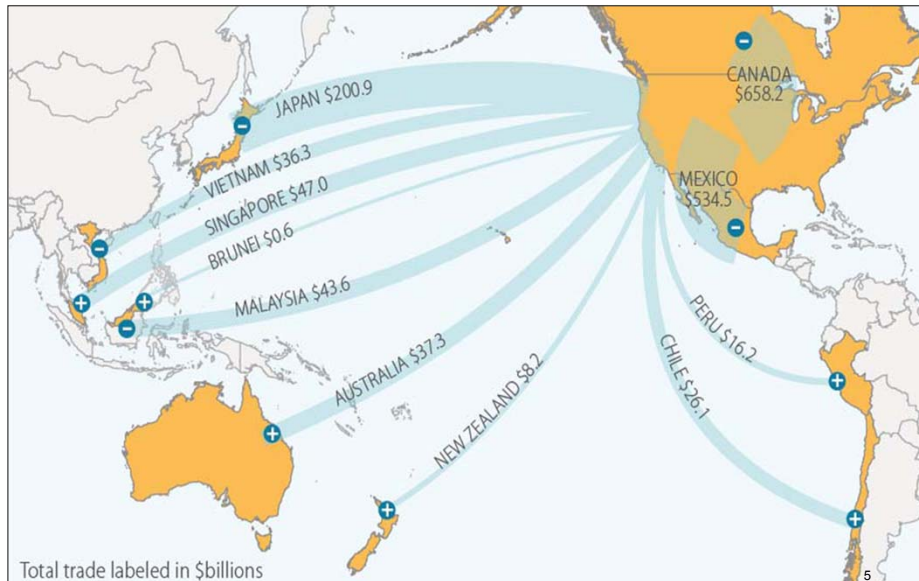
* Existing Free Trade Agreement with the U.S.

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TPP Parties and Total Trade



TPP Parties in Waiting

Announced Interest

- Colombia
- Indonesia*
- Philippines
- South Korea
- Taiwan
- Thailand

* Declared Intent

Notable Exclusions

- Brazil
- China**
- India**

** China & India promoting the Regional Comprehensive Economic Partnership (RCEP) alternative to TPP

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Methods for the TPP to Enter Into Force

Within two years from signing (by February 3, 2018) all TPP members provide notification that they have completed their domestic treaty ratification processes, in which case the TPP comes into force 60 days after the 12th TPP member provides such notification; or,

If two years elapse and all signatories still have not ratified the agreement, the TPP will come into force after 60 days if:

- At least six original signatories have provided notice that they have successfully ratified the agreement; and
- Those six signatories, among them, *represent 85 percent of the total GDP of the twelve originals signatories.*

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Methods for the TPP to Enter Into Force

The United States represents over 60% of the combined GDP of the original 12 countries, so without U.S. participation both methods will fail.

Japan represents approximately 17% of the combined GDP of the original 12 countries, so Japan's ratification is also essential for the TPP to enter into force.

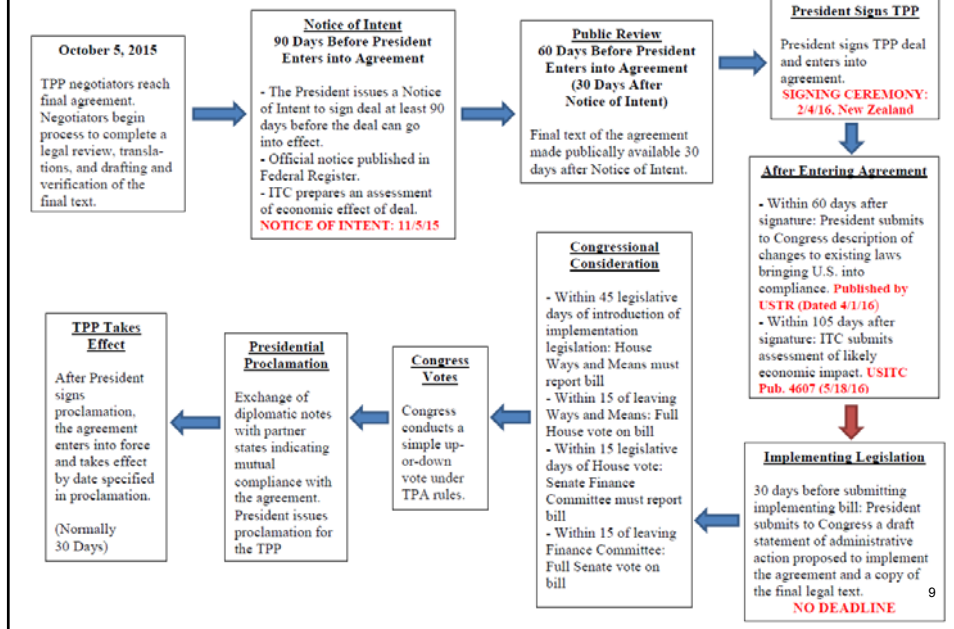
One little mentioned TPP fact: **Withdrawal is permitted six months after providing written notification.**

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U.S. TPP Approval and Implementation Process



TPP Significance

Economic

- Japan's participation increased the potential economic significance of the agreement.
- In 2014, Japan was the United States' fourth-largest goods export (\$67 billion) and import (\$134 billion) market.
- Malaysia and Vietnam stand out as TPP countries without existing U.S. FTAs.

Strategic

- Reaffirms U.S. economic leadership in the region.
- Serves as a counter to growing Chinese economic and political influence.
- Failure to enact would allow China to shape regional rules of commerce and diplomacy through its own trade and investment initiatives.

Specific Issues

Market Access	<p>a commitment among FTA partners to eliminate most, if not all, tariffs and quotas on their trade in industrial goods and agriculture.</p> <p>Some reductions phased out over a number of years.</p> <p>For agricultural goods, tariffs and quotas on some of the most sensitive products would remain in place.</p>
Agricultural Products	<p>TPP appears to significantly improve market access for many U.S. food and agricultural products</p> <p>Non-U.S. FTA partners Japan, Vietnam, and Malaysia, offer the greatest market potential</p>
Autos	<p>Eliminates tariffs on autos and auto parts in TPP countries over various phase-out periods, including the 2.5% U.S. auto and 25% U.S. truck tariffs over 25 and 30 years, respectively, with Japan-specific safeguards in case of import surges.</p>
Textiles & Apparel	<p>Eliminates all TPP country import tariffs on textile and apparel products over various phase-out periods.</p> <p>Vietnam granted an earned import allowance exempting, up to a given threshold, contingent on a specific quantity of Vietnamese imports of certain U.S. fabrics.</p>

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Other Issues Addressed in the TPP

- Customs and Trade Facilitation
- Digital Trade/ eCommerce
- Government Procurement
- Intellectual Property Rights (IPR)
- Investment (ISDS)
- Labor and Environment
- Regulatory Barriers
- State-Owned Enterprises
- Services
- Side Agreement on Exchange Rates
- Transparency and Anti-Corruption
- Dispute Settlement

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TPP Rules of Origin

The TPP Rules of Origin chapter creates a fundamental commitment that **only “originating goods”—that is, goods genuinely produced in TPP countries—**will receive the TPP’s lower tariff benefits.

Question: Can a Faucet qualifying as “Made in Vietnam” not be Eligible for TPP Duty-Free Preference?

Answer: **Maybe**

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TPP “Originating”

Wholly Obtained or Produced Goods

- Goods grown, harvested or fished in TPP countries

Goods Produced Exclusively from TPP Materials

- Goods produced exclusively from originating materials and that otherwise meet the TPP rules of origin as eligible to receive lower tariffs.

Product Specific Rules

- The Rules of Origin chapter allows many goods to be considered TPP originating if they meet the agreement’s product-specific rules limiting the type or amount of non-TPP materials that can be used

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TPP “Cumulation”

The TPP Rules of Origin allow TPP countries to treat materials from one TPP country in the same way they treat materials from any other TPP country when these materials are used to make a TPP good.

This concept, called “cumulation,” is intended to strengthen incentives for TPP businesses to integrate production and supply chains within the TPP region.

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TPP Rules of Origin: Other Issues

De Minimis: With only few exceptions, if the value of all non-originating materials not satisfying the applicable change in tariff classification requirement does not exceed 10 per cent of the value of the good, the finished good is nonetheless considered an “originating good.”

Direct Shipment: An originating good cannot pass through the territory of one or more non-Parties unless:

- It is being transported on a through bill of lading/air waybill;
- Does not undergo any operation outside the TPP territories other than: unloading; reloading; etc., or any other operation necessary to preserve it in good condition; and
- Remains under the control of the customs administration in the territory of a non-party.

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Rules of Origin: Treatment for Specific Goods



Textiles and Apparel Rules of Origin

- Applies a “yarn-forward” rule of origin to textile and apparel products, requiring components be sourced within the TPP region, including the yarn or fabric.
- A short supply list allows exemptions from this rule for products made of yarns and fabrics in limited supply within the TPP region.



Automobile Rules of Origin

- Require 45% or 55% regional value content (RVC) for finished vehicles, depending on the method of calculation, and
- ROO require 35%-45% RVC for auto parts.

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Example: Hot Water Dispenser



- Hand Operated, chrome finished sink faucet, made of solid brass and copper
- Made in Vietnam
- From Parts made in China, Malaysia, Vietnam and/or Japan
- HTSUS Number:
8481.80.1030
- Dutiable at 4% if no FTA

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TPP Rules of Origin

- **Wholly Obtained or Produced Goods**
- **Goods Produced Exclusively from TPP Materials**
- **Product Specific Rules: HTS 8481.80**

HTS 8481.10 - 8481.80

- A change to a good of subheading 8481.10 through 8481.80 from any other heading; or
- No change in tariff classification required for a good of subheading 8481.10 through 8481.80, provided there is a regional value content of not less than:
 - a) **35 percent** under the **build-up method**; or
 - b) **45 percent** under the **build-down method**; or
 - c) **55 percent** under the **focused value method** taking into account only the non-originating materials of heading 84.81.

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SCENARIO A: Hot Water Dispenser 8481.10 - 8481.80 (A change to a good of subheading 8481.10 through 8481.80 from any other heading)

COMPONENT PART	COST*	HTS	C/O	TPP	TARIFF SHIFT
Lubricant	\$ 3.50	3403.99	MY	✓	
Vent tube	\$ 1.50	3917.32	MY	✓	
Plastic cap	\$ 0.50	3923.50	MY	✓	
Race cap- knob	\$ 0.85	3926.30	MY	✓	
Self tapping screws	\$ 0.50	7318.14	CN		✓
Screws	\$ 0.50	7318.15	CN		✓
Retainer spring washer	\$ 0.95	7318.22	CN		✓
Snap ring	\$ 0.85	7318.29	CN		✓
Stem spring	\$ 1.05	7320.90	CN		✓
Screen flow straightener	\$ 1.25	7326.90	CN		✓
Bushing	\$ 0.75	7415.29	CN		✓
Outlet end piece	\$ 2.50	7415.39	VN	✓	
Base plate	\$ 6.00	8203.30	VN	✓	
Outlet assembly	\$ 12.00	8307.90	VN	✓	
Dispenser body; dispenser cap; valve body; valve disk; valve stem	\$ 28.00	8481.90	JP	✓	
Labor	\$ 3.00				
General expenses	\$ 5.00				
Profit	\$ 10.00				
TOTAL COST	\$ 78.70				

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SCENARIO B: Change the Origin of One Key Component

COMPONENT PART	COST*	HTS	C/O	TPP	TARIFF SHIFT
Lubricant	\$ 3.50	3403.99	MY	✓	
Vent tube	\$ 1.50	3917.32	MY	✓	
Plastic cap	\$ 0.50	3923.50	MY	✓	
Race cap- knob	\$ 0.85	3926.30	MY	✓	
Self tapping screws	\$ 0.50	7318.14	CN		✓
Screws	\$ 0.50	7318.15	CN		✓
Retainer spring washer	\$ 0.95	7318.22	CN		✓
Snap ring	\$ 0.85	7318.29	CN		✓
Stem spring	\$ 1.05	7320.90	CN		✓
Screen flow straightener	\$ 1.25	7326.90	CN		✓
Bushing	\$ 0.75	7415.29	CN		✓
Outlet end piece	\$ 2.50	7415.39	VN	✓	
Base plate	\$ 6.00	8203.30	VN	✓	
Outlet assembly	\$ 12.00	8307.90	VN	✓	
Dispenser body; dispenser cap; valve body; valve disk; valve stem	\$ 28.00	8481.90	CN		
Labor	\$ 3.00				
General expenses	\$ 5.00				
Profit	\$ 10.00				
TOTAL COST	\$ 78.70				

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TPP Rules of Origin

Product Specific Rules: HTS 8481.80

A change to a good of subheading 8481.10 through 8481.80 from any other heading. (Dispenser body goes from 8481.90 to 8481.80, so this rule does not work because it stays in heading 8481.

No change in tariff classification required for a good of subheading 8481.10 through 8481.80, provided there is a regional value content of not less than:

- 35 percent under the build-up method; or
- 45 percent under the build-down method; or
- 55 percent under the focused value method taking into account only the non-originating materials of heading 84.81.

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Regional Value Content (RVC)

1. **Build-Up Method:** $RVC = \frac{VOM}{VOG} \times 100$
2. **Build-Down Method:** $RVC = \frac{VOG - VNM}{VOG} \times 100$
3. **Focused Value Method:** $RVC = \frac{VOG - FVNM}{VOG} \times 100$

Where:

VOG = Value of the Good

VNM = Value of Non-originating Materials

VOM = Value of Originating Materials

FVNM = Value of Non-originating Materials specified in the applicable product-specific-rule (PSR)

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Regional Value Content (RVC) Calculations

COMPONENT	COST*	HTS	C/O	FVNM	VOM	VNM
Lubricant	\$ 3.50	3403.99	MY		\$ 3.50	
Vent tube	\$ 1.50	3917.32	MY		\$ 1.50	
Plastic cap	\$ 0.50	3923.50	MY		\$ 0.50	
Race cap- knob	\$ 0.85	3926.30	MY		\$ 0.85	
Self tapping screws	\$ 0.50	7318.14	CN			\$ 0.50
Screws	\$ 0.50	7318.15	CN			\$ 0.50
Retainer spring washer	\$ 0.95	7318.22	CN			\$ 0.95
Snap ring	\$ 0.85	7318.29	CN			\$ 0.85
Stem spring	\$ 1.05	7320.90	CN			\$ 1.05
Screen flow straightener	\$ 1.25	7326.90	CN			\$ 1.25
Bushing	\$ 0.75	7415.29	CN			\$ 0.75
Outlet end piece	\$ 2.50	7415.39	VN		\$ 2.50	
Base plate	\$ 6.00	8203.30	VN		\$ 6.00	
Outlet assembly	\$ 12.00	8307.90	VN		\$12.00	
Dispenser body; dispenser cap; valve body; valve disk; valve stem	\$ 28.00	8481.90	CN	\$28.00		\$28.00
Labor	\$ 3.00					
General expenses	\$ 5.00					
Profit	\$ 10.00					
TOTAL COST (VOG)	\$ 78.70			\$28.00	\$26.85	\$33.85

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Regional Value Content (RVC)

(a) 35 per cent under the build-up method; or
 (b) 45 per cent under the build-down method; or
 (c) 55 per cent under the focused value method taking into account only the non-originating materials of heading 84.81.

VOG:	Value of the Good	\$	78.70
VNM:	Value of non-originating materials	\$	33.85
VOM:	Value of originating materials	\$	26.85
FVNM:	Value of non-originating materials specified in the applicable product-specific-rule (PSR)	\$	28.00
Build-Up Method	$RVC = \frac{26.85}{78.70} \times 100$		34.12%
Build-Down Method	$RVC = \frac{78.70 - 33.85}{78.70} \times 100$		56.99%
Focused Value Method	$RVC = \frac{78.70 - 28.00}{78.70} \times 100$		64.42%

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TPP Origin Verification Procedures

An importer may make a claim for preferential treatment based on a Certificate Of Origin (COO) completed by the exporter, producer or importer.

- Blanket COOs and COOs for 12 months are acceptable.

The importer shall:

- Have the COO in its possession when the claim is made;
- Provide a copy of the COO if required; and,
- Provide “relevant documents” showing that the goods have not been illegally transshipped.

No prescribed format for the COO, but it must:

- Be in writing (electronic format is acceptable);
- Specify that the good is originating and meets TPP requirements; and,
- Meet the TPP “Minimum Data Requirements”.

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TPP Origin Verification Procedures

The Certificate of Origin must be completed based on “information that the good is originating,” appropriate documentation provided to the importer, or “reasonable reliance” on the producer’s information or supporting documentation.

Post Importation Claims: Importers are also permitted to make a claim for preferential treatment **“no later than one year after the date of importation or a longer period if specified in the importing Party’s law”** if:

- the importer provides a statement that the good was originating;
- provides a copy of the COO; and
- provides “such other documentation relating to the importation of the good as the importing Party may require.”

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TPP Origin Verification Procedures

- A Party shall not reject a COO due to minor errors or discrepancies.
- Importers shall not be subject to penalties for making an invalid claim if “prior to discovery of the error by that party” the importer “voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the party’s law.” **How will this requirement square against existing prior disclosure provisions? (19 USC 1592)**

Recordkeeping Requirements

- No less than five years from the date of importation.
- Includes the COO, documentation related to the importation, and all records necessary to demonstrate that the good is originating and qualified for preferential treatment.

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TPP Origin Verification Procedures

The importing Party may conduct a “**verification claim**” by one or more of the following:

- A **written request** for information from the importer, exporter or producer;
- A **verification visit** to the premises of the exporter or producer; or,
- “**Other procedures**” as may be decided by the importing Party and the Party where an exporter or producer is located.
- *Special rules for textiles and apparel.*

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TPP Origin Verification Procedures

The verification visit procedures require:

- (a) written notice
- (b) detailing what will be reviewed
- (c) permitting the foreign government to assist with the verification; and
- (d) allowing the exporter or producer “to consent or refuse the request.”
- A claim for preferential tariff treatment will not be denied solely because the Party where the exporter or producer is located did not provide requested assistance.
- Goods subject to verification will be released, subject to payment of duties or provision of security (e.g. Bond) as provided for in the Party’s law.

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