

Mega-regional agreements could reshape international trade in chemical products, say Carolyn Buller, head of the Chemicals practice, and Frank Samolis, leader of the Colombia/Chile country desk, at Squire Patton Boggs.

Major trade negotiations in two parts of the world have the potential to benefit the chemicals industry greatly in the coming years. The Trans-Pacific Partnership (TPP) agreement eliminates tariffs in key Asia-Pacific markets, including several countries with which the US does not yet have a preferential trade relationship. At the same time, the US and the EU are continuing efforts towards changing their own trade relationship through the Transatlantic Trade & Investment Partnership (TTIP).

TPP and TTIP are especially critical, as the World Trade Organisation (WTO) and its Doha round remain at a standstill, with little chance for progress. Together, these two agreements will set the rules of the road for trade in the 21st century and provide new market opportunities for chemical companies around the world.

## TPP: The Road Ahead

TPP is an ambitious trade agreement between the US and 11 partners: Australia, Canada, Japan, Malaysia, Mexico, Peru, Vietnam, Chile, Brunei, Singapore and New Zealand. On 5 October 2015, the TPP parties announced that they had reached a final deal after five years of negotiations.

The final agreement, released one month later on 5 November, comprises 30 chapters, dozens of bilateral exchanges and nearly 5,000 pages. While the US already shares trade agreements with six of the TPP parties, the deal opens up markets in five others: Brunei, Malaysia, New Zealand, Vietnam and, most notably, Japan.

According to the Department of Commerce's International Trade Administration, US chemical exports to these markets totalled \$8.7 billion in 2014 alone and currently face up to 35% tariffs. The TPP agreement will significantly reduce or eliminate tariffs on chemicals trade, with a majority of tariff lines falling to zero immediately upon entry into force.

In fact, Japan, one of the world's largest economies, will eliminate tariffs on all US chemicals on Day One of the agreement. The deal also includes a chapter on regulatory coherence that encourages good regulatory practices and establishes a Committee on Regulatory Coherence to identify future priorities and advance further regulatory cooperation.

The American Chemistry Council (ACC) and other major US business associations have voiced support for the TPP agreement. Greg Skelton, ACC's senior director of regulatory and technical affairs, recently testified before the US International Trade Commission that the deal "has the potential to eliminate punitive tariffs and taxes, and provide new market opportunities for US chemical exports."

## What's Next for TPP?

Representatives from the 12 TPP parties met in New Zealand on 4 February and signed the agreement. Attention now turns to the capital cities as each country undertakes its own ratification or approval procedures. Simultaneously, other governments are already angling to accede to the agreement. South Korea, Indonesia, Colombia, the Philippines and Thailand are among those reportedly considering whether to join the bloc.

Trade agreements are not treaties under US law, and must therefore be implemented through the legislative process (i.e. consideration by both the House of Representatives and the Senate). However, under the regular order, any one of 535 individual Members of Congress can propose amendments to draft legislation, creating substantial uncertainty for international negotiators.

Advocates argue that the only practical way to pass trade agreements in the United States is through the 'fast-track' process known as Trade Promotion Authority (TPA). This creates an alternative mechanism between Congress and the President for the consideration of trade agreements.

Generally speaking, Congress outlines overall negotiating objectives within the bill and is closely consulted over the course of negotiations. The final negotiated agreement is then sent to Congress for a simple up or-down vote, without amendment.

The TPA's proponents believe that it provides negotiating partners the assurances necessary to put their very best offers on the table without fear of the deal being amended by Congress. President Obama called on Congress to approve the TPP deal during his 2016 State of the Union Address, pointing to the pact as a way to "open markets, protect workers and the environment, and advance American leadership in Asia".

However, Republican lawmakers have expressed concerns with various aspects of the final deal, including labor provisions, IP protections for biological drugs, and language withholding investor-state dispute settlement protections from the tobacco industry. On 20 January, US Trade Representative Michael Froman told the press that the administration is looking to address Congressional and industry concerns related to the TPP deal through implementation and enforcement plans. These plans are reportedly underway, but may only be in the early stages.

While Obama is seeking swift approval of the deal, Senate Majority Leader Mitch McConnell and other Republican leaders have stated they do not want a vote on the TPP prior to the lame duck session that will follow the November Presidential and Congressional elections. In fact, trade issues can be especially contentious during election years like this one, increasing the likelihood that any Congressional vote on TPP will be delayed until the end of 2016.

The TPP debate is only just heating up, and the agreement's supporters and opponents are preparing for major advocacy efforts focused on Capitol Hill. The debate surrounding renewal of TPA in 2015 pitted protrade industry stakeholders against labour organisations and other groups, previewing the fight for TPP. Supporters of the pact must voice their support to Congress to help make the TPP a reality.

Highly regulated industries like the chemical sector will probably see greater regulatory efficiency gains in the ongoing TTIP negotiations between the US and the EU. Obama first announced the launch of these negotiations in his 2013 State of the Union Address.

In fact, the US-EU economic relationship is the largest in the world, and many tariffs are already low or non-existent. More notably, TTIP negotiators are working to deepen US-EU regulatory cooperation by increasing transparency ahead of regulatory acts, providing opportunities for stakeholder consultations and harmonising regulatory requirements wherever possible.

Chemical industry stakeholders on both sides of the Atlantic support the TTIP's goal of promoting US-EU regulatory cooperation. The ACC and CEFIC have put forward their own proposals to support the negotiations and promote efficiencies in US and EU regulation of their industry. Unlike the TPP talks, the TTIP talks are still ongoing, providing businesses the opportunity to engage with negotiators and influence the final text.

The US and EU have already held 11 rounds of negotiation. Despite the Obama administration's stated wish to finalise the agreement before he leaves Washington, less than nine months now remain before his successor takes office. The deal faces hurdles in the EU as well – sceptics are already mobilising opposition efforts, while a referendum in the UK in June could lead to the country's complete withdrawal from the EU and introduce even more uncertainty to the process.

The TPP and TTIP agreements will set high standards for future trade agreements and modernise international business in the 21st century, especially as the WTO's Doha round continues to falter. Squire Patton Boggs is engaging with those key Administration officials, lawmakers, and industry stakeholders that will be critical to securing Congress' approval of the TPP and its ultimate entry into force.

\* - Also contributing to this article was **Robert Kapla**, head of the International Public Policy Practice.