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TPP Partners at an Impasse as APEC Summit Approaches

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In July, trade negotiators from the Trans-Pacific Partnership (TPP) countries gathered in Ottawa, meeting formally for the first time since Brunei in September 2013 to make progress on substantive issues and to reaffirm their commitment to completing the TPP negotiations by the November 2014 Asia-Pacific Economic Cooperation (APEC) summit in China. Negotiators met to discuss agreements on intellectual property, investment, state-owned enterprises and rules of origin, among other issues. However, market access talks between Japan and the United States concerning agriculture and automobiles overshadowed the negotiations as the two trading giants remain bogged down over Japan's desire to protect its automobile market and exclude five agricultural product areas from the negotiations. The 12 TPP partners wrapped up the negotiations in Ottawa without an agreement, thus making President Obama's goal of a final deal by November more elusive.

The main goals of the TPP are to expand trade and investment, promote innovation, enhance economic growth and support the creation and retention of jobs. The TPP negotiations have focused on a variety of issues, including trade in goods and services, government procurement, intellectual property rights, standards and technical barriers to trade (TBT), customs regulations and dispute settlement. If an agreement is reached by the end of the year, the TPP will be the largest regional trade and investment block in the world, creating a \$28 trillion market across the Pacific.

The TPP will have a significant impact for U.S. exporters, especially small and midsize enterprises (SMEs). According to the Peterson Institute, a Washington-based think tank, the TPP will generate \$123.5 billion worth of U.S. exports per year by 2025 and \$77 billion in real income per year for U.S. businesses. Among the twelve negotiating partners, nine are top importers of U.S. goods and services. Even though the U.S. already benefits from bilateral agreements with Australia, Chile, Singapore and Peru, and enjoys access to the Canadian and Mexican markets through NAFTA, agreements with Brunei, Japan, Malaysia, New Zealand and Vietnam will expand market access even further.

Japanese Market Access – the Real Prize

The Japanese market is the most significant target for U.S. companies. Though Japan's average tariff rate on all goods is fairly low, it maintains high tariff rates on agricultural products, such as wine (15 to 57.7 percent), apples (17 percent), natural cheese (29.8 percent) and beef (38.5 percent). Japan joined the TPP negotiations last year with strong support from U.S. agricultural groups, which assumed that Japan would accept and implement the TPP goal of tariff elimination in all products. But Japan is demanding special treatment for its agricultural sector, including the exclusion of certain "sensitive" products, such as pork, sugar and rice, from tariff elimination. The United States has never agreed to allow a trading partner to exempt as many tariff lines as Japan is requesting – 586. If Japan is allowed these exemptions, other TPP countries could pull back in the negotiations, which would diminish the benefits of the entire agreement and set a negative precedent for future trade deals.

Another important priority for the U.S. is improving access to the Japanese market in automobiles. According to the Japan Automobile Importers Association, Japan imported 13,142 vehicles from the United States in 2013. The auto talks are focused on addressing non-tariff measures that the U.S. views as impeding access

for U.S. automakers, reforming Japan's Preferential Handling Procedure (PHP) certification system, financial incentives, distribution of motor vehicles and dispute resolution. Currently, the talks have bogged down over three major issues:

1. Transparency
2. Facilitation of foreign market access through harmonization of standards, elimination of "red tape" and recognition of various certifications
3. Utilization of new and innovative technologies, including green technologies

The U.S. is calling on Japan to set a minimum level for U.S. automobile imports. At the same time, the U.S. wants to retain tariffs on Japanese vehicles – 2.5 percent on cars and 25 percent on trucks – to protect the auto industry, which fears it will be flooded by cheaper imports. Ironically, the U.S. policy on automobile tariffs is the mirror image of Japanese policy on farm tariffs.

Finally, the U.S. seeks to make more progress generally on behalf of SMEs at opening up the Japanese market in the TPP negotiations. Japan currently imposes a variety of protectionist measures, including tariff rate quotas, import bans and restrictions, unique technical standards, rules and regulations favoring local goods, complicated regulations (Japan Industrial Standards apply to more than 600 products with over 8,500 different regulations), and customs restrictions, to keep out American products.

The only chapter that has been completed in the TPP talks is that which deals with SMEs. This chapter commits signatories to take certain steps to provide information to small- and medium-sized enterprises about the benefits of the deal, including the establishment of country-specific websites targeted at SMEs and a special committee that will focus on outreach to such businesses. Specifically, each country has committed to set up a website, interconnected to the websites of other TPP countries, containing summaries of the main parts of the TPP agreement as well as the benefits of the agreement for SMEs. This platform will include electronic tools to facilitate the identification of business opportunities for SMEs across the TPP region. The chapter also establishes an SME committee responsible for (a) promoting workshops or other activities to inform SMEs about the benefits of the agreement; (b) exploring opportunities for TPP parties to cooperate in training government officials to develop and give advice related to exports; and (c) developing programs to help SMEs participate in global supply chains.

Given the secrecy of the TPP negotiations, press releases on the status of the negotiations and the effects on SMEs are vague and lacking in substantive detail. The Office of the United States Trade Representative (USTR) issued a list providing some information on how the U.S. seeks to shape the TPP in favor of SMEs' market access to Japan and other TPP members. According to the list, SMEs stand to gain from the TPP in the following areas:

4. Elimination of tariff and non-tariff barriers, including red tape at the border
5. Streamlining of customs procedures
6. Strengthening of intellectual property (IP) protection, and greater transparency
7. Establishment of a reviewing system that monitors the effects of the TPP on SMEs

So far, the devil is in the details and the specifics of any agreement on these points have only been released to a handful of multinational companies through a secure link.

The dispute between the two largest economies in the TPP framework is hampering the broader 12-country negotiations for sealing a pact by November. Japan is reluctant to concede anything important at this time because the U.S. does not have Trade Promotion Authority (TPA), the November mid-term elections are uncertain, and the U.S. wants the TPP more than Japan does. Japan is the real prize in the TPP, and

Japanese trade negotiators know this. They will use this leverage to their best advantage. Thus, time is on Japan's side as the APEC summit draws near.

Conclusion

Frustrated by the lack of progress in global trade talks at the World Trade Organization, the TPP countries are trying to establish a regional trade and investment pact, one which nonetheless is bogged down in a bilateral dispute between the U.S. and Japan over automobiles and farm tariffs. The Ottawa Round in July 2014 was largely about managing expectations and diverting attention from the impasse between the U.S. and Japan. The TPP is expected to open new markets to U.S. businesses, especially SMEs, but the bilateral focus of the negotiations between the U.S. and Japan is causing delays. It is questionable whether the TPP will be finalized by the November APEC summit, and prognosticators are now predicting the negotiations to be concluded some time in late 2015, if at all. This would be the fourth consecutive year in which the APEC summit deadline for a TPP deal was missed. If the TPP ever gets off the ground, it will serve as a model for expanding market access outside of the WTO framework and for future multilateral trade and investment agreements such as the Trans-Atlantic Trade and Investment Partnership (TTIP) currently in the works. That's a big "IF".

If you have any questions or want to discuss how this could impact your business, contact your Baker Donelson attorney or one of the attorneys in the Firm's Global Business Team.