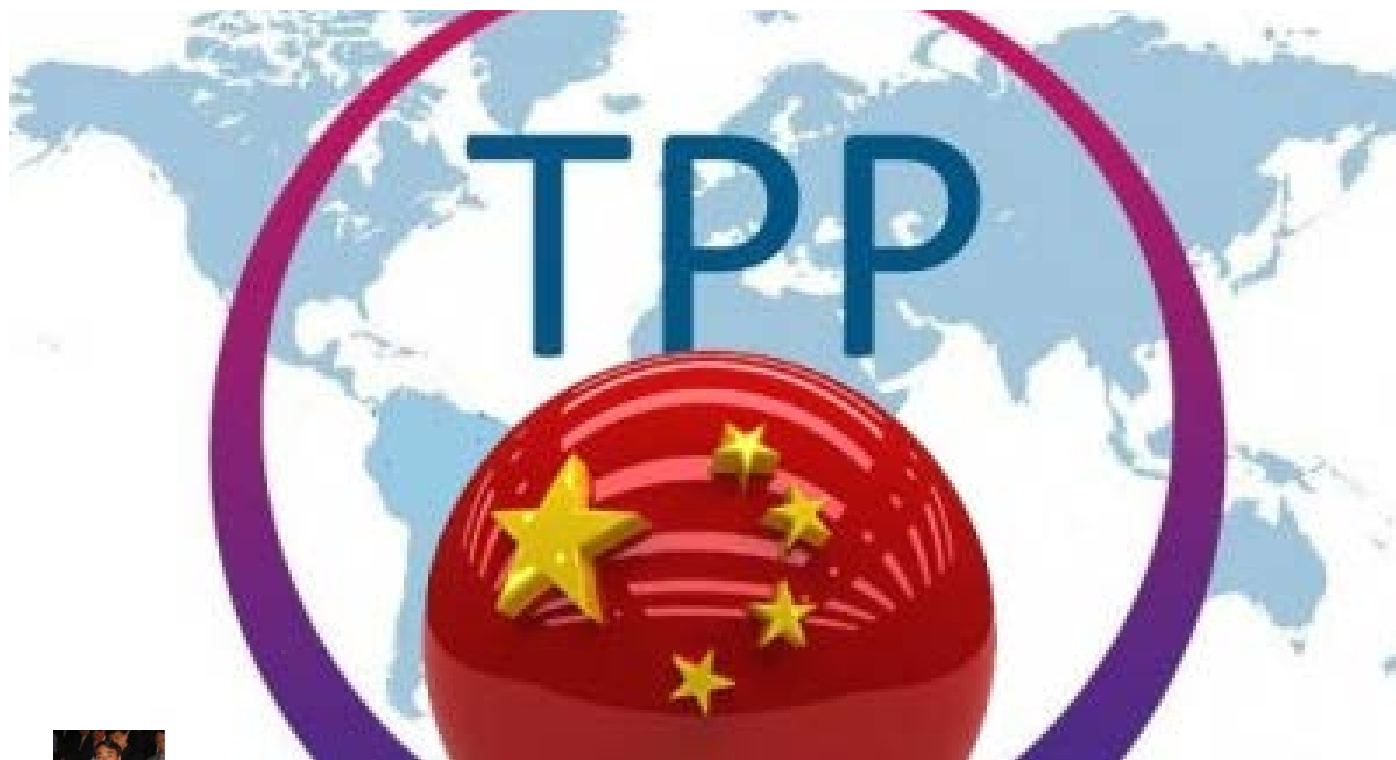




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Trade Law, Policy and Strategy; Smarter Global Commerce for Lifestyle and Sustainable Value; Economics of Law

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## Trans-Pacific Partnership and China's Trade Strategy

Oct 6, 2015 | 116 views 16 Likes 8 Comments

**With the conclusion, on October 4th of 2015, of the Trans-Pacific Partnership (“TTP”) of the 12 countries of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam, China shall overleap the long time debate on whether to collaborate with it or establish a different arrangement such as APEC Free Trade Agreement (“FTAAP”) for the next decades of the 21 century.**

As the result of a high-standard, ambitious, comprehensive agreement promoting economic growth; enhancing innovation, productivity and competitiveness; raising living standards; reducing poverty in our countries; and promoting transparency, good governance, and enhancing labor and environmental protections, the TPP will be an important step toward the ultimate goal of open trade and regional integration across the region and setting the example rules for the global commerce.

Five defining features make the TPP a landmark 21st-century agreement:

(1) Comprehensive market access for goods, services and investment; (2) Regional approach to commitments facilitating the development of production and supply chains, cross-border integration and opening domestic markets; (3) Addressing new trade challenges of the digital economy and the role of state-owned enterprises; (4) Inclusive trade for ensuring that economies at all levels of development and businesses of all sizes can benefit from trade; (5) Platform for regional integration for including additional economies across the Asia-Pacific region.

The TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; digital commerce; government procurement; intellectual property; labor; environment; and also 'horizontal' chapters meant to ensure that TPP fulfils its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions. In addition to updating traditional approaches to issues covered by previous free trade agreements (FTAs), the TPP sets rules for new and emerging trade issues, including but not limited to the Internet and the digital economy, the participation of state-owned enterprises in international trade and investment, the ability of small businesses to take advantage of trade agreements, and other topics.

The current TPP members cover 40% of the global trade, and 36% of the world GDP. Once the pact is ratified and signed into laws by the members for implementation, more regional economies such as Korea, Philippines, Thailand, and Taiwan will have a chance to join. The TPP will also serve as a good example for additional trade negotiations, such as the Transatlantic Trade and Investment Partnership (“TTIP”), and even the WTO further negotiations. Since international trade is intertwined, the long term significance of the TPP shall not be downplayed, even for the non-member economies and other regions.

**Since 1980’, China has been the beneficiary and contributing party of trade globalization, liberalization and regional economic boom, and shall continue to welcome opportunities and accept the challenges in positive and active thinking, decision-making and behavior.**

**In addition to the bilateral trade pacts, we believe China should seize this chance and embrace the TPP to more deeply participate in the regional trade arrangement, play more significant roles and enjoy more benefits. China should review and study the pact diligently and carefully and prepare to negotiate and join the regional trade deal for a beneficial trade growth.**

**At the same time, China can use this to adopt best practices for domestic reforms as they did in 2000 when it negotiated the WTO entry deal.**

**While details of the TPP are emerging in the near future, in addition to the general principles of rule of law, transparency, non-discrimination, national treatment, the most-favored nation treatment, “minimum standard of treatment”, “negative list”, and due process, the Chinese side at least needs to focus the following key**

## **areas, for which the Chinese rules may have significant gaps:**

**1. Trade in Goods:** The 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. China's average duty rate is still 9.5%, and some non-tariff barriers remain.

**2. 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.

**3. Technical Barriers to Trade (TBT):** To reduce costs for TPP businesses, especially small businesses, TPP Parties agree to rules that will facilitate the acceptance of the results of conformity assessment procedures from the conformity assessment bodies in the other TPP Parties, making it easier for companies to access TPP markets. In addition, the TPP includes annexes related to regulation of specific sectors to promote common regulatory approaches across the TPP region. These sectors are cosmetics, medical devices, pharmaceuticals, information and communications technology products, wine and distilled spirits, proprietary formulas for prepackaged foods and food additives, and organic agricultural products.

**4. Investment:** The TPP provides prohibition on "performance requirements" such as local content or technology localization requirements; free transfer of funds related to an investment, subject to exceptions in the TPP to ensure that governments retain the flexibility to manage volatile capital flows, including through non-discriminatory temporary safeguard measures (such as capital controls) restricting investment-related transfers in the context of a balance of payments crisis or the threat thereof, and certain other economic crises or to

protect the integrity and stability of the financial system; and freedom to appoint senior management positions of any nationality. TPP Parties adopt a “**negative-list**” basis, meaning that their markets are fully open to foreign investors, except where they have taken an exception (non-conforming measure). The TPP also provides for **neutral and transparent international arbitration of investment disputes**.

**5. Cross-Border Trade in Services:** For trade in service, the TPP includes market access, which provides that no TPP country may impose quantitative restrictions on the supply of services (e.g., a limit on the number of suppliers or number of transactions) 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. TPP Parties accept these obligations on a “negative-list basis,” meaning that their markets are fully open to services suppliers from TPP countries, except where they have taken an exception. TPP Parties agree to permit free transfer of funds related to the cross-border supply of a service. In addition, the TPP includes a professional services annex encouraging cooperative work on licensing recognition and other regulatory issues, and an annex on express delivery services.

**6. Financial Services:** The TPP will provide important 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. It provides for the sale of certain financial services across borders to a TPP Party from a supplier in another TPP Party rather than requiring suppliers to establish operations in the other country in order to sell their service – subject to registration or authorization of cross-border financial services suppliers of another TPP Party in order to help assure appropriate regulation and oversight. A supplier of a TPP Party may provide a new financial

service in another TPP market if domestic companies in that market are allowed to do so. TPP Parties have country-specific exceptions to some of these rules in two annexes attached. TPP Parties also set out rules that formally recognize the importance of regulatory procedures to expedite the offering of insurance services by licensed suppliers and procedures to achieve this outcome. In addition, the TPP includes specific commitments on portfolio management, electronic payment card services, and transfer of information for data processing. The Financial Services chapter provides for the resolution of disputes relating to certain provisions through neutral and transparent investment arbitration. Finally, it includes exceptions to preserve broad discretion for TPP financial regulators to take measures to promote financial stability and the integrity of their financial system, including a prudential exception and exception of non-discriminatory measures in pursuit of monetary or certain other policies.

**7. Telecommunications:** the 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. TPP Parties recognize the importance of relying on market forces and commercial negotiations in the telecommunications sector. They also agree that they may take steps to promote competition in international mobile roaming services and facilitate the use of alternatives to roaming. TPP Parties agree that, if a Party chooses to regulate rates for wholesale international mobile roaming services, that Party shall permit operators from the TPP countries that do not regulate such rates the opportunity to also benefit from the lower rates.

**8. Electronic Commerce: the TPP Parties commit to ensuring free flow of the global information and data that drive the Internet and the digital economy, subject to legitimate public policy objectives such as personal information protection. The 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.**

**9. Government Procurement:** the TPP 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.

**10. Competition Policy:** the 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. Parties also agree to cooperate, as appropriate, on matters of mutual interest related to competition activities. In addition, TPP Parties agree to cooperate in the area of competition policy and competition law enforcement, including through notification, consultation and exchange of information.

**11. State-Owned Enterprises (SOEs) and Designated Monopolies:** the TPP covers large SOEs that are principally engaged in commercial activities. TPP Parties agree to share a list of their SOEs with the other TPP Parties and to provide, upon request, additional information about the extent of government ownership or control and the non-commercial assistance they provide to SOEs.

**12. Intellectual Property:** the TPP covers patents, trademarks, copyrights, industrial designs, geographical indications, trade secrets, other forms of intellectual property, and enforcement of intellectual property rights, as well as areas in which Parties agree to cooperate. The TPP establishes standards for patents, based on the WTO's TRIPS Agreement 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. The TPP also requires certain transparency and due process safeguards with respect to the protection of new geographical indications, including for geographical indications recognized or protected through international agreements. In addition, the TPP 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. In copyright, it establishes commitments requiring protection for works, performances, and phonograms such as songs, movies, books, and software, and includes effective and balanced provisions on technological protection measures and rights management information. It requires Parties to establish or maintain a framework of copyright safe harbors for Internet Service Providers (ISPs). These obligations do not permit Parties to make such safe harbors contingent on ISPs monitoring their systems for infringing activity.

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

**14. Environment:** the TPP Parties share a strong commitment to protecting and conserving the environment, including by working together to address environmental challenges, such as pollution, illegal wildlife trafficking, illegal logging, illegal fishing, and protection of the marine environment. They also agree to fulfil their obligations under the Convention on International Trade in



Endangered Species of Wild Fauna and Flora (CITES), and to take measures to combat and cooperate to prevent trade in wild fauna and flora that has been taken illegally.

**15. Regulatory Coherence:** the TPP's Regulatory Coherence will help ensure an open, fair, and predictable regulatory environment for businesses operating in the TPP markets by encouraging transparency, impartiality, and coordination across each government to achieve a coherent regulatory approach.

**16. Dispute Settlement:** The Dispute Settlement of TPP is intended to allow Parties to expeditiously address disputes between them over implementation of the TPP. TPP Parties will make every attempt to resolve disputes through cooperation and consultation and encourage the use of alternative dispute resolution mechanisms when appropriate. When this is not possible, TPP Parties aim to have these disputes resolved through impartial, unbiased panels. The dispute settlement mechanism created applies across the TPP, with few specific exceptions. 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. Panels will consider requests from non-governmental entities located in the territory of any disputing Party to provide written views regarding the dispute to panels during dispute settlement proceedings. To maximize compliance, the Dispute Settlement chapter allows for the use of trade retaliation (e.g., suspension of benefits), if a Party found not to have complied with its obligations fails to bring itself into compliance with its obligations. Before use of trade retaliation, a Party found in violation can negotiate or arbitrate a reasonable period of time in which to remedy the breach.

**China, as the second largest economy of the world, is left out of the**

**landmark trade deal, but the door is still open, and the future is in the hands of the Chinese leadership.**

**We hope China will take this rare opportunity in decades to review and accept the internationally recognized values, rules, and procedures for free and fair trade, enhance the trade, economic and legal reforms in China, collaborate with the trade partners, overcome the difficulties of economic and social changes, and finally reach the goal of being a nation of sustainable development, modernization, rule of law and democracy for the better-off of the people.**

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## Why the Indian middle class may resolve power problems!

Oct 5, 2015 | 295,917 views 579 Likes 165 Comments

Indian cities are today bustling with opportunities, buildings and new multiplexes. But then look in a bit closer, there are problems. An important issue is uninterrupted power! Bangalore city is today not just famous for its IT and Start-up prowess, but also erratic power supply and the familiar noise of Diesel gensets. We experience at least 3-4 hours of power cuts every day. Unfortunate, yet true.

So is there a solution?

A few citizens today are now setting up 'rooftop' solar panels and generating power. Apartment associations are also debating the long term return on investment of solar panels , inverters, power storage systems in long term.

Although the initial cost of setting up a rooftop solar plant might seem higher, the average daily running cost is relatively cheaper. A diesel genset for example consumes 3-4 litres of fuel to generate 1000 watts of AC output. Simple math would tell you the cost is only going to go up for daily upkeep. While a rooftop solar project will cost less over a period of 5 years or much more.

The middle class today buys apartments, villas and duplexes in the range of Rs.50 lakh to Rs.1 crore or even more. Would it not be efficient to set up a self sustaining electrical system as well?

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