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Trade Expert: New TPP Deal A Missed Opportunity For US

by [Ferdous Al-Faruque](#)

The 11 remaining countries linked to the TPP deal that was being negotiated by the Obama administration struck a deal that discarded several key provisions that were important to US manufacturers, and specifically to drug- and device-makers. An expert on the issue says that's a huge missed opportunity for US trade on the global market.

A new version of the Trans-Pacific Partnership trade deal that is being worked out by the remaining 11 members of the negotiations seems to be a major missed opportunity for the US and American manufacturers, a trade expert says.

Earlier this month the remaining members of the TPP deal announced they had come to an agreement on the core positions of the deal, which is now called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The members include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The new deal, however, does not include key parts that the Obama administration was trying to negotiate to improve intellectual property rights – specifically, an annex that was geared toward helping drug- and device-makers.

The original TPP was intended to be a high-standard agreement that would outline trade rules for almost half the global population; the largest of its kind. It was also meant to be an opportunity for the US to introduce strong rules and tariff-cutting measures intended to help American companies get a better footing in international markets.

"With the US not being part of that trade agreement, the challenge is that we've lost that opportunity to help set some of those rules that are so important, particularly for our innovative companies, including in the medical innovation industry," said Gina Vetere, an international trade attorney at the law firm Covington and Burling.

She said the rules include multi-lateral obligations related to regulatory approval processes, intellectual property, and commitments intended to provide due process and procedural fairness with respect to reimbursement procedures for medical products.

"For the medical innovation industry, robust intellectual property rules were critical in TPP, as TPP provided an opportunity to enhance global IP rules – such as the [World Trade Organization's] Trade-Related Aspects of Intellectual Property Rights," or TRIPS, Vetere said.

While TRIPS still covers a lot of ground for the medical industry, TPP was an important opportunity for US medical manufacturers to introduce rules that ensured that their products were being properly valued across borders. Vetere says this is an important part of the deal what would have given more incentives to develop new medicines and technologies, and prevent other countries from "free-riding on US innovation."

Missing Provisions Bad For Medtech

In the original TPP deal, the US was also pursuing solutions to tackle non-tariff barriers including a chapter that dealt with intellectual property, and a pharmaceuticals and medical devices annex that could have been beneficial to US medical device companies. Fundamentally the aim was to ensure that the trading system between the member countries did not discriminate against products that were made abroad, and in effect required regulatory approval processes for domestic products to apply the same rules to foreign products as they would for domestic ones.

"What's disappointing for US companies is that this is a lost opportunity to enhance or clarify certain rules that would have made sure that US intellectual property and regulatory data receive the highest level of protection from the members of the TPP," Covington and Burling's Gina Vetere says.

The fact that the US is no longer a part of the TPP "does not mean that US intellectual property will receive less protection than the IP of other TPP members," said Vetere. "Everybody is still subject to the foundational IP protections in TRIPS. What's disappointing for US companies is that this is a lost opportunity to enhance or clarify certain rules that would have made sure that US intellectual property and regulatory data receive the highest level of protection from the members of the TPP."

She noted that 11 of the 20 provisions suspended by the latest version of the deal were on IP rules that the US was keenly interested in, most of which were related to patents or regulatory data protections. Further, the annex relating to pharmaceuticals and medical devices was also suspended, which would have been beneficial to those US industries.

Vetere said the suspended annex was similarly worded to how the US had negotiated deals in the past with individual countries, including Australia and South Korea. It was aimed at providing greater procedural fairness and transparency in the regulatory system for pricing and reimbursement, which was a priority for the medical device industry.

"Another goal for the US industry was to lock in greater procedural fairness and transparency protections in other countries to ensure that US medical innovations were treated fairly overseas," added Vetere. "The suspension of this annex sends a disappointing message about the priority other countries place on providing such due process and related protections."

While the US can still negotiate individually with countries in the TPP, which is something President Donald Trump says he prefers, American companies won't be able to benefit from the tariff-cutting provisions in the new deal. Vetere says this missed opportunity is another reason why the absence of the US from the trade deal is another major disappointment. And while it has trade agreements with a number of the countries that are part of the new TPP, the US could have achieved more if it was at the negotiating table.

That said, the US is still one of the most open markets in the world but the deal would have improved its access to other countries, according to Vetere. In particular, she noted that pharmaceutical and medical device companies see robust IP protections and transparency in health-care systems as important factors in providing certainty that their innovations will be protected.

"TPP would have helped increase that certainty for the US medical innovation industry," she added.

Public Pushback On Multilateral Trade Deals

During the 2016 presidential election, Democratic primary candidate Bernie Sanders and then-candidate Trump vowed to pull out of the TPP deal, statements that were later echoed by Democratic general election candidate Hillary Clinton. While Trump's decision to leave the negotiating table was a campaign promise fulfilled, Vetere says the reason behind it seems to be that there was a groundswell push by the American public to take a new approach to global trade.

"We now have an agreement where the US is no longer at the table setting the standards and rules that promote an innovative economy. The countries remaining at the table sent a message that they don't value the same rules US innovators do, and I think it's unfortunate we missed that opportunity," Vetere says.

"Those of us who believe in free trade need to do a better job explaining [to the public] why our trade agreements are so important," said Vetere. "We now have an agreement where the US is no longer at the table setting the standards and rules that promote an innovative economy. The countries remaining at the table sent a message that they don't value the same rules US innovators do, and I think it's unfortunate we missed that opportunity."

In general, Vetere said free-trade proponents such as herself and those in various industries need to step up and find ways to better educate the public about the importance of being at the table helping to develop the rules of trade. She says hopefully that's a lesson they will keep in mind as the US looks to renegotiate the North American Free Trade Agreement (NAFTA) and other international trade deals.

Vetere pointed out that there seems to be a perception by the American public that trade agreements benefit foreign governments at the expense of the US, when in reality such deals tend to have more benefits for the US economy.

"The election definitely represented a groundswell of discontent about what many perceived as the fault of trade agreements," she said. "Job dislocation, job losses or other economic discontent can be attributed to a number of other factors, but trade agreements seem to be an easy scapegoat."

Asked whether the US may join TPP later, Vetere said it will depend on where the new TPP deal ends up. The US will have to see what the rules in TPP are and whether another trade deal ends up superseding it.

She emphasized, however, that the Trump administration has made clear that they are not interested in multilateral deals.

From the editors of The Gray Sheet