

SPECIAL REPORT: Ministers Reach TPP Deal in Atlanta

October 5, 2015: To paraphrase Leo Tolstoy, “Free trade supporters are all alike; every free trade opponent is unhappy in its own way.” As trade ministers from 12 countries concluded the Trans-Pacific Partnership (TPP) in Atlanta Oct. 5, advocates on both sides of the trade debate did not hold back their applause or disappointment at the deal. By Monday morning, after extending their talks beyond the original two-day schedule, the ministers hailed the agreement with a joint statement and press conference. The press conference had been originally scheduled for Sunday afternoon, then delayed twice more.

“After more than five years of intensive negotiations, we have come to an agreement that will support jobs, drive sustainable growth, foster inclusive development, and promote innovation across the Asia-Pacific region,” they said in their joint statement (see **WTTL**, Oct. 5, page 2).

While this was more than an agreement in principle, the final text of the deal may not be ready for another month. “To formalize the outcomes of the agreement, negotiators will continue technical work to prepare a complete text for public release, including the legal review, translation, and drafting and verification of the text,” the statement noted.

Under the domestic process laid out in the fast track trade promotion authority (TPA) bill passed in June, the public will have 60 days to review the final text before it goes to Congress, which then has 90 days before the president signs it. “Given where we are in the calendar and the requirement, this is really a 2016 issue for Congress to consider, not a 2015 issue,” U.S. Trade Representative (USTR) Michael Froman said at the closing press conference; avoiding speculation on the effects the next election will have on the approval process. “I will leave presidential politics to somebody else,” he said.

Thus, the TPA schedule would appear to put off President Obama’s signing of the pact until after April 1, 2016, and a congressional vote on the deal until the summer of 2016.

Tough Issues Remained Tough Until End

Prior to the announcement of the final deal, forecasts about the chances of an agreement were changing hourly, with final disagreements still focused on same issues that have

stymied talks for months: dairy, sugar, auto rules of origin and drug patent protection. At the press conference, none of the ministers were willing to point to a single obstacle that delayed the final accord. “There were decisions being made as of 5:00 this morning,” Froman said. None of the ministers wanted it to appear that they were giving in on their country’s sensitive issues too soon. The following are some last-minute deals.

New Zealand, Canada Claim Some Agreement on Dairy

On agriculture, New Zealand Trade Minister Tim Groser admitted he didn’t get the deal he wanted until 5:00 A.M. In the end, the agreement “establishes, in the long run, complete elimination of all tariffs on everything New Zealand exports with two exceptions: one is the beef tariff in Japan, and the other [is] some dairy products - some of which will achieve tariff elimination, and others have proven to be too difficult,” he said.

Canada refused to open its closed dairy market completely, but its agreement to a partial opening still angered its country’s milk producers. “Some time is needed to fully evaluate the impacts of the agreement on our industry, but DFC’s [Dairy Farmers of Canada] initial assessment is that in order to secure this trade agreement for Canada, the sum of access granted in the dairy industry projects to be 3.25% of Canada’s 2016 milk production,” said DFC in a statement.

Peru’s Minister of Foreign Trade and Tourism Magali Silva, the only woman on the dais, said her country came in with high expectations. “Our public institutions are prepared for the changes we have to make,” she said. Peru currently has 17 trade agreements, she said, which allows the country’s farmers to “have decent lives.”

Data Protection for Biologics Displeases Drug Industry

During the press conference, the USTR’s office posted a summary of the 30 TPP chapters without delving into many specifics. For example, the summary says nothing on data protection for biologics, which was reportedly a sticking point until the very last minute. The ministers agreed, however, on a minimum standard of least five years of data protection, an outcome that “both encourages and incentivizes innovation,” Froman told the press conference. U.S. law currently requires 12 years of data protection.

This outcome seemed to satisfy no one. As expected, the pharmaceutical industry denounced the compromise. “We are disappointed that the ministers failed to secure 12 years of data protection for biologic medicines, which represent the next wave of innovation in our industry. This term was not a random number, but the result of a long debate in Congress, which determined that this period of time captured the appropriate balance that stimulated research but gave access to biosimilars in a timely manner,” PhRMA, the drug industry trade association, posted on its website.

On the other side, Doctors Without Borders (MSF) still objected to the lengthy data protection standard. “Although the text has improved over the initial demands, the TPP will still go down in history as the worst trade agreement for access to medicines in developing countries, which will be forced to change their laws to incorporate abusive

intellectual property protections for pharmaceutical companies,” MSF Legal Policy Adviser Judit Rius Sanjuan said in a statement.

The U.S. is not the only country in the deal with electoral politics to manage. Canada will hold national elections Oct. 19, so the new parliament will judge the merits of the deal, Canada’s Trade Minister Ed Fast told the press conference. Fast defended Canada’s participation in the deal. It would be “the height of irresponsibility to abandon the negotiations” at this point, he said. Acknowledging the last-minute delays in the final deal, he said, “At the end of the day, here we are.”

A technical explanation of the pact that Canada issued claimed the agreement on pharmaceuticals “reflects Canada’s existing regimes, systems and laws.” It said the deal is in line with outcomes it secured in the Canada-EU Comprehensive Trade and Economic Agreement (CETA). “Canada has retained the scope to meet its TPP obligations for patent term restoration for regulatory approval delays with a sui generis system. The TPP provision will have the necessary flexibility to allow Canada to retain its export exception and two year cap on additional protection,” the explanation explained.

“The TPP includes a strong regulatory review exception, reflecting Canada’s existing regime with respect to the availability of an early working exception. This will help ensure that generic drugs can continue to be introduced as soon as is practicable after the expiry of a patent across the region, as is the case now. As with other areas in the TPP, Parties have retained the flexibility to determine the best means of implementing the patent linkage obligations within their domestic regimes,” it added.

Australian Trade Minister Andrew Robb also commented on the biologics issue. “The thing is that many observers assumed that we had to arrive at some hybrid, single system. The agreement recognizes that we can travel on different roads but end up at the same outcome. We can travel with some common elements, and the minimum standard for data protection is common to all of us, but at the same time, the deal recognizes the existing systems of different countries are able to reach the same outcome,” he said.

Congressional Reactions Reserve Judgment

With few details, Senate Finance Committee Chairman Orrin Hatch (R-Utah) said the final deal falls “woefully short.” He said he “will carefully examine the agreement to determine whether our trade negotiators have diligently followed the law so that this trade agreement meets Congress’s criteria and increases opportunity for American businesses and workers.” The U.S. “should not settle for a mediocre deal that fails to set high-standard trade rules in the Asia-Pacific region for years to come,” Hatch added.

House Ways and Means Committee Chairman Paul Ryan was also circumspect. “I am reserving judgment until I am able to review the final text and consult with my colleagues and my constituents. In particular, I want to explore concerns surrounding the most recent aspects of the agreement,” he said in a statement.

Sen. Ron Wyden (D-Ore.), ranking member on Finance, issued a statement saying, “It’s now time for Congress and the public to examine the details of the TPP and assess

whether it will advance the nation's interests." He said he was pleased that there is "for the first time, an agreement to curb currency manipulation and new and enforceable obligations on countries like Vietnam and Malaysia to uphold labor rights, including in the case of Malaysia enforceable commitments to address human trafficking." Wyden applauded provisions that will ensure that "countries that are part of it can regulate tobacco without fearing intimidation and litigation by Big Tobacco."

Ways and Means Ranking Member Sander Levin (D-Mich.) conceded that progress was "made on important issues, with the outcome on a multitude of issues still requiring deeper scrutiny, and others falling short of the results we seek." He said removing tobacco from investor-state dispute settlement is a vital and welcome step, while also noting that there was "substantial progress with Vietnam and Malaysia in the areas of worker rights as we seek to ensure they comply with the enforceable standards."

Nonetheless, Levin was still unhappy with Mexico's compliance with labor rules. "The Finance Ministers' plan regarding currency manipulation – an issue with a major impact on U.S. jobs – is also entirely unsatisfactory," he said in a statement. "We will need to see the language to understand the full impact of several issues, including the auto rules of origin, Japan automotive market access, investment, environment, state-owned enterprises and agricultural market access," he added.

Presidential candidate Sen. Bernie Sanders (I-Vt.) was adamantly opposed. "I am disappointed but not surprised by the decision to move forward on the disastrous TPP that will hurt consumers and cost American jobs," he tweeted. Later in the day, he sent out a fund-raising email on his position. "In the Senate, I will do all that I can to defeat this agreement," he wrote. No statement yet from candidate Hillary Clinton.

Critics Still Express Opposition

While ministers hailed the strongest chapters on labor and the environment, advocates on those issues were steadfast. "The TPP's environment chapter might look nice on the surface but will be hollow on the inside, and history gives us no reason to believe that TPP rules on conservation challenges such as the illegal timber or wildlife trade will ever be enforced," said Sierra Club Executive Director Michael Brune in a statement.

"The Administration had a hard time reaching this deal for good reasons: it appears that many problematic concessions were made in order to finalize the deal. We ask the administration to release the text immediately, and urge legislators to exercise great caution in evaluating the TPP," AFL-CIO President Richard Trumka said.

"Collective actions, including protests challenging the terms and process of the TPP and demanding progressive alternatives during the course of the negotiations, appear to have softened some of the worst provisions sought by corporations. **But the TPP remains a bad deal for public health** [original emphasis]," noted Center for Policy Analysis on Trade and Health (CPATH). The conservative Americans for Limited Government (ALG) also complained about the agreement "The release of the Trans-Pacific Partnership summary is interesting propaganda, but the key issues of governance and enforcement mechanisms under the deal remain shrouded in mystery pending release of the full

agreement,” said ALG President Rick Manning in a statement. The Coalition for a Prosperous America (CPA), another group critical of trade deals, questioned the benefits of TPP. “There is little reason to believe the U.S. will gain net exports from those countries. Four of the countries - Brunei, New Zealand, Vietnam, Malaysia - have GDPs smaller than Philadelphia,” it said in a statement.

Industry Groups View Specifics of Accord

Most industry groups issued positive comments on the deal, foreshadowing a campaign to support its approval by Congress. The Sweetener Users Association (SUA), which has lobbied for an end to the U.S. sugar program and for easing rules on imports, expressed support for the deal. “Based on the details that have been released, the TPP will provide much-needed additional market access for U.S. sugar imports from Australia. However, we need more sugar than provided by the agreement,” it said in a statement.

“While we have gained 65,000 metric tons in additional access, the effect of the 23 percent additional quota allocation is still largely unknown. What is known is that U.S. users of sugar are facing a shortfall in sugar availability that far exceeds the 65,000 metric tons in new sugar allocation clearly provided to Australia,” it added.

The United States Fashion Industry Association, which represents brand-name apparel firms, noted that its members already source from four TPP partner countries: Vietnam, Peru, Mexico and Malaysia. “We understand the final agreement contains a yarn-forward rule of origin and limited short-supply list, though we remain hopeful it also will include many opportunities for fashion brands, retailers, importers, and wholesalers to expand their global businesses,” its president, Julia K. Hughes, said in a statement.

Rep. Sander Levin’s complaints about the rules of origin for automotive trade, echoed complaints by some U.S. car makers, especially Ford. But Mexican Economy Minister Ildefonso Guajardo Villarreal, who fought hard to protect Mexican auto interests, said he was satisfied with the compromise that was reached in the accord.

After the U.S. and Japan finished their own negotiations in bilateral terms, Mexico participated in three rounds of “very collaborative” technical meetings, he told the press conference. “At the end, we got a very balanced solution on recognizing the level of integration of the auto industry in the Asian region and North American region. We were very pleased with the outcome, which will allow us to build on the success of the auto industry,” he told the press conference.

“We are pleased that digital trade rules, including requirements to ensure cross-border data flows, have been a focus for TPP negotiators and look forward to reviewing the details of the final agreement,” said the Telecommunications Industry Association.

Stephen Ezell, vice president at the Information Technology and Innovation Foundation (ITIF) issued a statement saying, “When it comes to technology policy, we are happy to say that the agreement sets a high bar that will maximize the opportunity for innovation worldwide. Unfortunately, for the life science sectors, negotiators have settled on a low bar that will be detrimental to biotechnology innovation, and ultimately patient health outcomes, for years to come.”