

REIMAGINING THE TPP:

Revisions That Could
Facilitate U.S. Reentry



BY WENDY CUTLER AND CLETE WILLEMS

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EXECUTIVE SUMMARY

The Trans-Pacific Partnership (TPP) offered the United States an opportunity to expand market access for U.S. workers, businesses, and farmers; create a level playing field on labor and environmental issues; and promote U.S. standards in the Asia-Pacific. Since the United States withdrew from the TPP in 2017, our regional partners have concluded trade deals without us, and China has forcefully asserted its economic and national security interests. This has increased the urgency for the United States to step up its economic engagement in the world's fastest-growing region.

A return to the TPP, now known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), would provide an immediate boost to U.S. economic competitiveness and geopolitical influence. It would also help ensure that the United States features prominently in regional supply chain decisions. However, many concerns about the original TPP are legitimate and U.S. trade policy views have shifted since the agreement was concluded. This calls into question whether the United States could ever muster the political support necessary to join the current agreement.

In light of this dynamic, this paper attempts to shift the conversation away from a binary choice between rejoining the agreement as it exists or staying away. Rather, we focus on whether it is possible to modify the CPTPP to meet our economic interests and facilitate potential U.S. reentry. To develop our recommendations, we engaged in extensive consultations over the past year with a broad range of trade experts, domestic stakeholders, and CPTPP members. We were also inspired by the bipartisan support for the United States–Mexico–Canada Agreement (USMCA), which was itself a renegotiation of a previously unpopular agreement, as well as the important work underway on the U.S.-led Indo-Pacific Economic Framework (IPEF).

To help start a meaningful conversation about potential CPTPP reentry, we suggest 12 areas for potential updates or improvements:

1. Improve CPTPP rules of origin, especially on autos and trucks.
2. Strengthen labor provisions to ensure a level playing field.
3. Bolster provisions to better protect the environment.
4. Modernize rules to address anticompetitive behavior from non market economies.
5. Strengthen provisions to combat currency manipulation.
6. Adopt a targeted approach to investor-state dispute settlement obligations..
7. Apply a flexible approach to government procurement rules.
8. Modernize rules to reflect advancements in digital trade and promote digital inclusiveness.
9. Enhance fairness in intellectual property rights protection and enforcement.
10. Embed supply chain security and resilience into the agreement as a new chapter.
11. Adopt collective approaches to address economic coercion.
12. Incentivize members to review and improve the agreement over time.

We believe that a revised CPTPP that includes these changes is worth considering as a means to bolster our international competitiveness, protect our economic and national security interests, promote our values and norms, and shape the rules that will govern trade and investment for years to come.

SETTING THE SCENE

In 2016, the United States and 11 Asia-Pacific trading partners reached agreement on the Trans-Pacific Partnership (TPP). U.S. negotiators characterized the TPP, which covered 40 percent of the global economy, as an “ambitious, next generation, Asia-Pacific trade agreement that reflects U.S. economic priorities and values.”¹ If adopted, this agreement would have removed thousands of tariff and non-tariff barriers to U.S. goods and services in the fastest-growing and most dynamic region in the world. It also included then cutting-edge labor, environmental, and state-owned enterprise (SOE) provisions and would have provided a platform to promote U.S. standards over China’s state-led model. However, the TPP ran into strong domestic opposition, and the United States withdrew from the agreement in early 2017.

Even as the United States stepped aside, our partners moved forward without us. The remaining countries heralded the entry into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) a year later, with the United Kingdom likely to join in the coming months. Moreover, China stepped into the void left by the United States and actively pursued trade agreements in the region. Particularly prominent among these is the Regional Comprehensive Economic Partnership (RCEP), a 15-nation Asian trade pact that took effect in 2022. RCEP, which cuts tariffs, harmonizes standards, and establishes rules of trade between its members, is now the largest trade agreement in the world.

As a result of the CPTPP and the RCEP, the United States is less competitive and less influential in the region.

As a result of the CPTPP and the RCEP, the United States is less competitive and less influential in the region. American exporters continue to face high tariffs on a range of manufacturing and agricultural goods in CPTPP countries, while tariffs are being reduced or eliminated among members. Countries in the region are also aligning regulatory policies and standards in ways that disadvantage key U.S. products such as medical equipment and chemicals. Additionally, the United States has forfeited an important opportunity to promote its values and effectively shape rules related to labor and the environment.

In other words, these agreements work together to encourage Asia-Pacific countries to integrate their economies and link key supply chains with one another and with China instead of the United States. This development comes at a time when the COVID-19 pandemic, the war in Ukraine, and other unforeseen events have revealed the extreme fragility of supply chains and have highlighted the importance of developing secure and resilient supply chains for critical goods.

This status quo is unacceptable in light of the region’s importance to future U.S. economic growth and the U.S.-China economic competition. The Biden Administration has the right idea with the Indo-Pacific Economic Framework (IPEF), a novel initiative to address pressing regional economic matters. But countries in the region are clamoring for more. Further, some IPEF countries have expressed concern about making significant commitments on issues such as labor or the environment without the benefit of tariff cuts included in traditional trade agreements.

A return to the CPTPP would provide an immediate boost to U.S. economic competitiveness and geopolitical influence. However, many concerns about the original agreement are legitimate. The CPTPP's automotive rules of origin would allow significant Chinese content in vehicles shipped duty-free to the United States, its labor and environmental provisions fall short of more recent agreements such as the United States–Mexico–Canada Agreement (USMCA), and it fails to adequately address nonmarket economy practices. Additionally, many of its provisions are dated and do not reflect more recent innovations in the global economy such as the growing prominence of digital trade.

Therefore, the question for U.S. policymakers to consider is not whether to join the CPTPP as it stands but whether we can modernize and reform the agreement in a way that makes it possible for the

The question for U.S. policymakers to consider is not whether to join the CPTPP as it stands but whether we can modernize and reform the agreement in a way that makes it possible for the United States to rejoin.

United States to rejoin. That is the purpose of this paper.

In the pages that follow, we outline our ideas on how to improve the CPTPP in the hopes of initiating a meaningful conversation about U.S. reentry. We suggest elements of the agreement that need to be revised or modernized, new elements to enhance it, and

elements that should remain. In developing these ideas, we have consulted a broad range of experts on the right and left; representatives of the labor, environment, agriculture, and business communities; and key allies and partners around the world.

We ultimately believe that a revised CPTPP that includes the changes we recommend would promote U.S. economic and geopolitical interests and thus garner strong bipartisan support in the U.S. Congress and from the American people. Further, we believe that these ideas – although difficult to achieve in some cases – would be viable for current CPTPP participants.

Just as Democrats and Republicans came together to support the USMCA – in itself a renegotiation of an agreement that many believed was seriously flawed – we can come together to do the same with a revised CPTPP. Long-term U.S. economic competitiveness and national security depend on it.

PRIORITY RECOMMENDATIONS

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is largely based on proposals developed by the United States in the context of the original Trans-Pacific Partnership (TPP) negotiations. It includes robust provisions on market access, intellectual property, services, small- and medium-sized businesses, and other areas. Enforceable commitments on labor and the environment help promote a level playing field, while provisions on state-owned enterprises and digital trade address new trade challenges. In many cases, similar provisions were incorporated in the United States–Mexico–Canada Agreement (USMCA).

If the United States were to rejoin the CPTPP, we recommend agreeing to many of the original provisions that continue to serve our interests, as well as market access commitments. At the same time, we recommend addressing shortcomings and outdated provisions to maximize the benefit to the United States and set global standards in line with our values. In particular, the United States should seek the following changes, revisions, and modernizations to improve the CPTPP. These suggestions do not constitute a list of U.S. demands, but a range of possible changes to be considered.

TABLE 1 REIMAGINING THE TPP

Many original provisions continue to serve U.S. interests, but we recommend addressing shortcomings and outdated provisions.

TPP POSITIVES	POTENTIAL IMPROVEMENTS	UPDATES & ADDITIONS
<ul style="list-style-type: none"> ▪ Expanded U.S market access to key Asian-Pacific markets through 18,000 tariff cuts on goods and agriculture products ▪ Opened markets to U.S. exporters of services such as software, cloud computing, and logistics services markets ▪ Permanently banned customs duties on digital products ▪ Banned data localization requirements and cross-border data restrictions ▪ Simplified customs rules and expedited treatment of express shipments, benefiting SMEs ▪ Established fair and transparent government procurement procedures ▪ Created rules on SOEs, groundbreaking at the time ▪ Required that food safety measures be transparent and science based 	<ul style="list-style-type: none"> ▪ Improve rules of origin on autos and trucks and limit nonmarket economy content ▪ Strengthen labor provisions, including enforceable commitments, to ensure a level playing field for American workers ▪ Bolster and strengthen enforceability of environment commitments to better protect the environment ▪ Adopt a more targeted approach to Investor-State Dispute Settlement obligations ▪ Ensure that government procurement rules provide needed flexibility ▪ Reinstate certain IPR provisions 	<ul style="list-style-type: none"> ▪ Modernize rules on nonmarket economy behavior ▪ Add provisions to combat currency manipulation ▪ Update digital trade rules to reflect technological advancements ▪ Promote supply chain security and resilience ▪ Provide tools to address economic coercion ▪ Incentivize members to improve the agreement over time

1. **Rules of Origin:** Improve the CPTPP automotive rules of origin and consider changes to other rules to limit nonmarket economy (NME) content from non-CPTPP members.
 - Fix the CPTPP automotive rules of origin in one of the following ways:
 - Seek a higher, simplified regional value content (RVC) for CPTPP rules (above the current 45 percent for vehicles), with a low ceiling for qualifying content from NMEs that are not part of the agreement.
 - Maintain current CPTPP automotive rules among existing members but include a commitment (in side letters) that for the United States, only automotive imports that meet USMCA-level rules of origin will be eligible for U.S. tariff preferences under the CPTPP.
 - Maintain current CPTPP automotive rules among existing members but for the United States exclude trucks and autos.
 - Establish a CPTPP committee to review rules of origin more broadly with an emphasis on limiting NME content from nonparticipant countries.

2. **Labor:** Strengthen labor provisions to ensure a level playing field for American workers and promote worker rights in CPTPP countries.
 - Develop updated and fully enforceable action plans with certain CPTPP countries to ensure the implementation of strong labor standards.
 - Link tariff phaseouts for U.S. imports to full compliance with labor obligations.
 - Enhance the enforcement tools for CPTPP labor provisions, drawing from the USMCA rapid response mechanism and experience gained from its usage.
 - Strengthen enforceability of labor commitments by clarifying the meaning of a “manner affecting trade” needed to establish a violation of the agreement.
 - Seek strengthened commitments to facilitate cooperation and information sharing to identify sources of forced labor and target imports made with forced labor.

3. **Environment:** Bolster provisions to better protect the environment, enhance conservation, and promote a healthy climate.
 - Include provisions to address marine debris, environmental impact assessments, enhanced fisheries commitments, air pollution, and harmonized energy performance standards in line with USMCA commitments.
 - Update and accelerate tariff and non-tariff barrier commitments to bolster trade in environmental goods and services among CPTPP members and diversify the supporting supply chains.
 - Strengthen enforceability of environment commitments by clarifying the meaning of a “manner affecting trade” needed to establish a violation of the agreement.
 - Seek new provisions or modifications to existing CPTPP obligations to promote renewable energy capacity and bolster the use of renewables.

- Consider adding new commitments to enforce key multilateral environmental agreements (MEAs).
- Establish a working group to explore carbon emissions measures, including common carbon accounting metrics; emissions monitoring systems; developing countries' needs; and regional approaches to carbon leakage, such as carbon border adjustment measures.
- Establish principles and best practices to achieve a circular economy focused on reverse supply chains that facilitate trade in secondary raw materials and used/recyclable goods.

4. Nonmarket Economy Issues: Modernize rules to address growing anticompetitive behavior related to state-owned enterprises (SOEs), excess capacity, forced technology transfer, and industrial subsidies.

- Strengthen CPTPP's definition of SOEs to include cases where a government holds the power to control an enterprise through any ownership interest, including indirect or minority ownership, as well as exercising undue influence.
- Include provisions to address excess capacity, especially in the steel and aluminum sectors.
- Prohibit members from requiring technology transfer or joint ventures as a condition of market entry.
- In U.S. implementing legislation, include provisions to strengthen U.S. trade remedies (e.g., address circumvention, third-party subsidies, and dumping).

5. Currency Manipulation: Strengthen provisions to combat currency manipulation.

- Include binding and enforceable provisions regarding currency manipulation, drawing on the USMCA's provisions that require countries to refrain from competitive devaluations while increasing transparency and accountability.

6. Investor-State Dispute Settlement (ISDS): Limit ISDS obligations for the United States to safeguard state sovereignty while continuing to protect against harmful behaviors such as expropriation.

- For developed countries, exchange letters to memorialize reciprocal non-application of ISDS provisions.
- For developing countries, exchange letters to focus ISDS commitments on specific sectors and problematic types of behavior.

7. Government Procurement: Open foreign procurement markets while ensuring the United States retains the necessary flexibility to address supply chain vulnerabilities and national security concerns.

- For CPTPP members that are World Trade Organization (WTO) Agreement on Government Procurement (GPA) signatories, exchange letters to limit reciprocal coverage to WTO GPA commitments unless otherwise agreed.
- For CPTPP members that are not WTO GPA signatories, agree on a two-year negotiating time frame to develop a satisfactory balance of coverage concessions.

8. **Digital Trade:** Modernize rules to reflect advancements in digital trade and promote digital inclusiveness.

- Modernize the CPTPP's E-Commerce chapter to incorporate certain enhancements and updates from the USMCA's Digital Trade chapter, such as limiting exceptions that undermine the application of data flow and localization provisions and exempt the financial services sector.
- Draw from the IPEF innovations that promote worker, consumer, and small- and medium-sized business concerns.

9. **Intellectual Property Rights (IPR):** Enhance fairness in IPR protection and enforcement by reinstating certain TPP provisions suspended by CPTPP members.

- Reinsert suspended TPP provisions that were also included in the USMCA such as the following:
 - Patent term adjustment when there is unreasonable or unjustifiable delay in issuance of a patent or market approval process.
 - Protection of undisclosed data from unfair use.
 - Requiring civil remedies and criminal penalties when technologies are circumvented to gain illegal access to copyright protected materials.

10. **Supply Chains:** Promote supply chain security and resilience by increasing connectivity and cooperation between members.

- Add a new chapter to the CPTPP on supply chains to do the following:
 - Coordinate responses to supply chain disruptions by identifying existing and potential chokepoints and vulnerabilities, and establish rules and mechanisms to address them, including early warning and crisis management mechanisms, drawing from IPEF discussions.
 - Establish “fast lanes” for trade of essential goods between CPTPP members to keep borders open to trade during times of shortages and crisis.
 - Limit the use and duration of export restrictions between CPTPP members, building on WTO commitments.
- Initiate discussions on developing sector- or product-specific supply chain agreements among CPTPP members that would include harmonized standards, accelerated tariff staging where appropriate, elimination of non-tariff measures, and trade facilitation measures.
- Establish a supply chain working group to promote sustainability in supply chains, including promoting cooperation on critical mineral resiliency and finding new sources of mining extraction and sustainable processing methods.

11. **Economic Coercion:** Develop approaches to address the growing threat of coercive measures.
 - Include a menu of options for (a) condemning and acting against countries pursuing economic and trade coercion and (b) assisting other CPTPP member countries subject to such coercion.

12. **Conditions for Entry, Review, and Withdrawal:** Incentivize members to review and improve the agreement over time.
 - In U.S. implementing legislation, include language clarifying that the United States will not join the CPTPP if China becomes a member and will not support efforts by China to accede.
 - In U.S. implementing legislation, require domestic reviews of the agreement every five years. As part of this review, require the president to submit a report to Congress outlining any improvements necessary to ensure the agreement continues to meet U.S. objectives. If the president determines after negotiations that these improvements cannot be achieved, Congress could take an up-or-down vote on remaining in the agreement.

BACKGROUND: LAY OF THE LAND

This paper attempts to start a conversation about what revisions to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) would be necessary for the United States to consider rejoining the agreement. At the outset, it is important to recognize that a U.S. return to the CPTPP would not be easy. Any proposed revisions would have to balance a range of U.S. views and interests necessary for domestic support, and they would also need to be unanimously approved by the nine CPTPP members that already have put the agreement into force. It would also require the U.S. government to conduct a meticulous review of existing provisions and a thorough interagency, stakeholder, and congressional consultation process.

As daunting as this task may seem, we believe it is in the interest of the United States to assess how to rejoin the CPTPP. To begin our work in helping drive a meaningful conversation about U.S.

To justify reentering the CPTPP, the United States must ensure that it meets the economic interests of U.S. workers, farmers, and businesses.

reentry, the Asia Society Policy Institute convened a task force of experts with diverse backgrounds. We included former senior trade officials in recent Republican and Democratic administrations, congressional trade experts, and a wide range of stakeholders. We also consulted with numerous additional U.S. trade experts and representatives of

key constituencies to ensure the views of labor, environmental, business, and agricultural groups, as well as CPTPP countries, were considered and reflected.

Over five sessions held from the fall of 2021 to the spring of 2022, the task force considered existing CPTPP provisions in depth and the changes that would be needed to facilitate potential U.S. reentry into the agreement. In coming up with our recommendations, we agreed that both economic and foreign policy interests are paramount. To justify reentering the CPTPP, the United States must ensure that it meets the economic interests of U.S. workers, farmers, and businesses. At the same time, we must recognize that we are in the midst of geostrategic competition with China that will define the world we live in for generations to come; the United States cannot afford to be on the sideline as China forcefully asserts its position in the region.

It is also important to recognize that the question of whether or not to rejoin the CPTPP now is different from the question of whether we should have joined the agreement at an earlier time. Since the United States withdrew from the TPP, China has actively promoted its interests through the RCEP and other regional initiatives, while the CPTPP's entry into force has put the United States at a pronounced economic disadvantage in expanding trade with its traditional partners and allies in the region.

To ensure that we balanced all of these important considerations, we started our work by outlining key objectives for our recommendations. Ultimately, we agreed that the recommendations should seek to achieve the following: (1) maximize U.S. economic benefits, (2) position the United States to successfully compete with strategic rivals such as China, (3) bolster U.S. efforts to create more resilient and secure supply chains, (4) gain domestic support for rejoining, and (5) gain acceptance from current CPTPP members.

Although we believe that our recommendations faithfully adhere to these objectives, our task force members did not uniformly endorse each of the report’s recommendations. The recommendations do, however, consider the useful input from these sessions—as well as subsequent consultations with numerous interested parties—and reflect the top priorities across a spectrum of perspectives.

THE TRANS-PACIFIC PARTNERSHIP

In 2016, the United States and 11 other countries—representing 40 percent of the global economy—concluded negotiations on the Trans-Pacific Partnership (TPP). This regional, “next-generation” trade agreement sought to enhance trade in the fastest-growing region in the world by lowering and eliminating tariffs as well as establishing trade-facilitating rules, including high-standard chapters on e-commerce, intellectual property, state-owned enterprises, labor, and the environment.

The United States cannot afford to be on the sideline as China forcefully asserts its position in the region.

The TPP would have brought significant tangible economic benefits to the United States. Key TPP provisions that benefited American workers and companies included the following:

- A total of 18,000 tariff cuts on exports of U.S. goods and agriculture products, including on duties as high as 59 percent for American machinery and 30 percent for pork.
- Fair and transparent service regulations and bans on investment requirements that would have boosted the competitiveness of U.S. exporters of tradable services, such as software, cloud computing, and logistics.
- Commitments on financial services that would have opened markets to U.S. portfolio managers, insurers, and other financial companies.
- Specific commitments on cross-border delivery of electronic payment services, a sector in which U.S. companies are competitive and which countries have sought to restrict,
- Obligations that sanitary and phytosanitary (SPS) measures be transparent and science based, better aligning the regulatory systems of TPP countries with U.S. standards.
- Bans on requirements that data be stored locally and on restrictions to the flow of data across borders, ensuring the internet remains free and open.
- A permanent ban among TPP members on customs duties on digital products that would have prevented tariffs on U.S. software, music, movies, games, and other digital goods.
- Fair and transparent government procurement procedures that allow sufficient time for suppliers to submit a bid and include guarantees that tenders be treated impartially.
- Rules on state-owned enterprises (SOEs) that were groundbreaking at the time, including legal recourse to ensure SOEs operate under commercial considerations at home and outside their home territory, reducing trade-distorting effects.
- Requirements that TPP members adopt and implement labor laws such as minimum wage, standard work hours, and occupational safety and health, leveling the playing field for American workers.

- Stronger environmental protections, including requirements that TPP countries effectively enforce environmental laws, implement multilateral agreements, combat wildlife trade, and eliminate harmful fishery subsidies.
- Procedures to ensure that small and medium enterprises (SMEs) benefit from the TPP, such as requiring members to provide easily accessible information on the agreement and establishing a committee to support SMEs.
- Simplified customs rules and expedited treatment of express shipments, benefiting SMEs that have limited capacity to deal with complex procedures and that disproportionately rely on shipment couriers to export goods.

An economic analysis published by the Peterson Institute for International Economics found the TPP would have increased U.S. GDP, exports, and wages without increasing unemployment.²

THE UNITED STATES EXITS THE TPP

By the time the United States concluded negotiations on the TPP, many Americans had become increasingly skeptical of international trade agreements and doubtful they were delivering the promised benefits. Although the Obama Administration had championed the TPP as an agreement that would “rewrite the rules of trade to benefit America’s middle class,” TPP negotiators found that the deal they had painstakingly negotiated over eight years was short on domestic support.³

While major business groups had overall positive things to say about the TPP, their ultimate support was contingent on the United States going back to the negotiating table to get more. In the lead up to the deal’s signing, much of the business community continued to push the Obama Administration for changes. Major financial services industry associations did not officially endorse the deal until mid-2016, after U.S. negotiators ensured financial data could only be subject to data localization under certain circumstances. Other sectors expressed frustration with what they deemed to be weakened protections on investor-state dispute settlement (ISDS), while the pharmaceutical industry complained that the duration for data protection for biologics was too short.

Criticism of the potential effects of the TPP, and global trade in general, on the U.S. workforce was particularly acute. Detractors argued that U.S. trade policy had already resulted in the outsourcing of millions of American jobs, shuttering tens of thousands of U.S. manufacturing operations, reducing job stability, stagnating worker compensation, and leaving working Americans vulnerable to the lower labor and environmental standards of key U.S. trading partners. Major labor unions warned that the TPP would lead to further deindustrialization and outsourcing. The Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC) worried that the deal would disproportionately benefit “economic elites” and leave workers to pay the price by reducing bargaining power, lowering wages, and putting even more U.S. manufacturing jobs at risk.⁴ The LAC also criticized the deal for insufficiently addressing currency manipulation and including only “weak rules of origin and inadequate state-owned enterprise provisions,” while providing “extraordinary rights” to foreign investors and the pharmaceutical industry. “Do not send this TPP to Congress,” the committee warned.

Environmental groups opposed the ISDS provisions as too pro-business, and they argued the deal left too much room for business interests to undermine climate-related public policy efforts.

CPTPP: Members and Accession Candidates



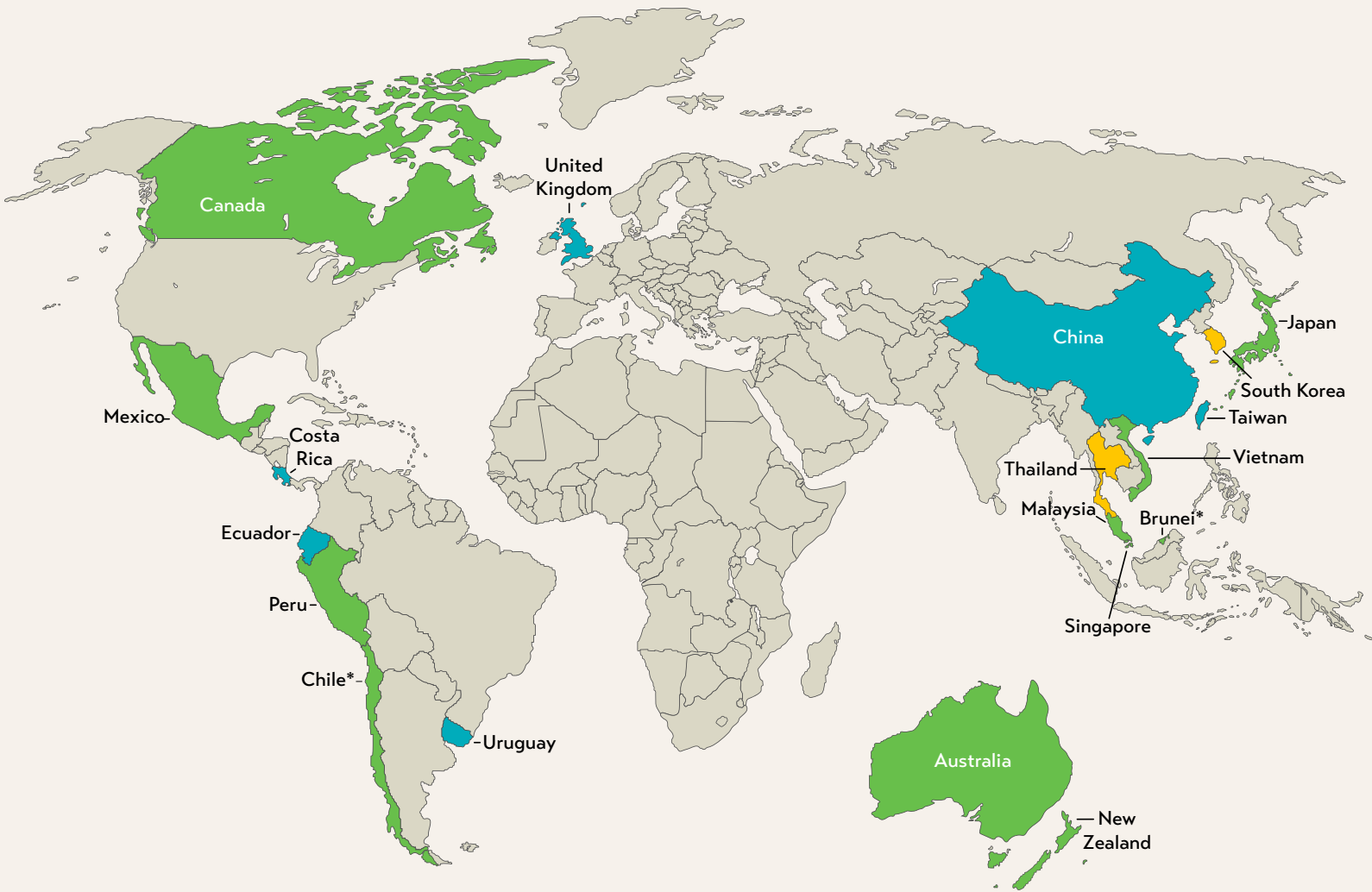
CPTPP Members



Accession Applicants



Interested Economies



* Has not yet ratified the CPTPP

They also argued that the environment chapter was weak on enforcement and coverage. Public health interest groups, meanwhile, expressed concerns that the existing protections for pharmaceuticals and biologics were actually weighted too much in the industry’s favor and could ultimately prevent access to affordable medicines.

As 2016 progressed and the presidential candidates sought the support of blue-collar workers in Rust Belt states, both Hillary Clinton and Donald Trump became increasingly critical of the TPP,

The renegotiation of the NAFTA under the Trump Administration, widely seen as a success by Republicans and Democrats alike, may be partly responsible for a positive shift of views on trade.

promising not to support U.S. participation if they were elected. On his third day in office, President Trump followed through on that promise, instructing the U.S. Trade Representative to withdraw the United States as a TPP signatory. The U.S. exit initially looked like the death knell for this agreement. However, within months, the remaining TPP members rallied under Japan’s leadership to bring the reworked agreement, the CPTPP, into force with modest revisions. Nevertheless, the U.S. withdrawal

dramatically reduced the pact’s influence, decreasing coverage from 40 percent of global GDP to 13 percent. The agreement, however, encourages additional partners to join over time provided they can live up to its high standards, and a number of economies, including the United Kingdom, China, and Taiwan, have formally applied for membership.

EVOLVING VIEWS ON TRADE

Americans’ perspectives on trade and the CPTPP have evolved considerably in the intervening years. Gallup polls show that the majority of Americans view trade as offering opportunities for economic growth.⁵ More Americans hold positive views of trade in 2022 than at any time between 1992 and 2016. While 79 percent of respondents to a 2021 Chicago Council poll said it was very important for U.S. foreign policy to protect American jobs, three-quarters also said that international trade benefits American consumers; improves American standards of living; and helps the U.S. economy, including tech companies and agriculture.⁶ The renegotiation of the North American Free Trade Agreement (NAFTA) under the Trump Administration, widely seen as a success by Republicans and Democrats alike, may be partly responsible for this positive shift of views on trade.

Even as Americans have become more comfortable with trade overall, they have grown increasingly critical of U.S.-China trade and the overall relationship between the two countries. A majority of Americans believe that trade with China weakens U.S. national security, worry that China is becoming more economically powerful than the United States, and think that U.S. jobs need greater protection from Chinese competition.⁷

Some in Washington have advocated for the United States to reconsider the strategic value of regional trade agreements as a way to strengthen and secure U.S. supply chains for critical and essential goods. Commerce Secretary Gina Raimondo and Treasury Secretary Janet Yellen have championed “friend-shoring,” which Yellen described defines as deepening ties with “countries that have strong adherence to a set of norms and values about how to operate in the global economy and about how to run the global economic system” and improving the reliability and security of critical supply chains.⁸ In fact, many believe that regional trade agreements that do not include China can facilitate the creation of new supply chains or strengthen existing ones.

China, meanwhile, has pursued trade deals of its own in an increasingly overt and aggressive fashion. In 2020, China joined 14 other Asian countries to conclude the Regional Comprehensive Economic Partnership (RCEP), currently the largest trade agreement, encompassing 30 percent of the world's population and 31 percent of global GDP. Although its provisions are not as ambitious as those of the CPTPP, it delivers tariff reductions and expanded market access that incentivize strengthened supply chain connections between participants. By integrating Asian economies and spurring growth, RCEP promotes the economic interests of countries such as China. This, in turn, strengthens China's gravitational pull in the region relative to that of the United States. As former President Obama warned of RCEP in 2016:

It won't prevent unfair competition among government-subsidized, state-owned enterprises. It won't protect a free and open Internet. Nor will it respect intellectual property rights in a way that ensures America's creators, artists, filmmakers and entrepreneurs get their due. And it certainly won't enforce high standards for our workers and our environment.⁹

China's bid in September 2021 to join the CPTPP deepened concerns over Beijing's apparent efforts to take a leadership role in the rules-based, open trade system that the United States has long championed. Meeting CPTPP requirements in such areas as SOEs, labor, digital, and IPR would require significant reforms at a time when Beijing in many respects is headed in the opposite direction. The CPTPP's requirement that prospective members gain the unanimous approval of members who have ratified the agreement also complicates China's accession bid, with some members expressing serious concerns. China, however, is a major trading partner for every CPTPP country—and the top trading partner for eight of them—so its bid should be taken seriously.⁵

RETHINKING THE DECISION TO EXIT

The Obama Administration envisioned the TPP as promoting an alternative to the state-led model promoted by Beijing in the Asia-Pacific, the world's most dynamic region in terms of economic opportunity and growth, and increasingly the center of gravity for the global economy and innovation. The TPP was intended to ensure that “our workers, our businesses, and our values are shaping globalization and the 21st century economy, rather than getting left behind.”¹⁰ In the context of the deepening U.S.-China rivalry and intensified Chinese efforts to shape the global trade architecture, policymakers on both sides of the aisle have found themselves increasingly aligned with that perspective. In their view, the U.S. withdrawal from the TPP was a mistake not just for U.S. economic interests but also in geopolitical terms.

Policymakers who have publicly advocated for the United States to reconsider its position on the TPP/CPTPP include senior senators and Senate Finance Committee members Tom Carper (D-DE) and John Cornyn (R-TX), who coauthored an op-ed in 2021 arguing that the United States must “get its seat back at the [CPTPP] table.”¹¹ Both senators also joined House colleagues from both parties in pronouncing the U.S. withdrawal from the TPP a mistake and a “missed opportunity to strengthen U.S. leadership in the global economy and reinforce our commitment to a rules-based system for international trade.”¹² There are also numerous proponents of the TPP on the House Ways and Means Committee.

Congressional proponents of reconsidering U.S. participation point to China's assertive trade posture, including its recent application to join the CPTPP. They view this move as a key indicator that the United States is falling behind its main economic competitor. By withdrawing from the agreement even as other countries in the region continued to build stronger trade ties with one another, the United States “put American workers and businesses at a competitive disadvantage [in] arguably the most strategically vital and economically dynamic region of the world.”¹³ The economic prosperity of the United States in the twenty-first century necessitates that we fortify these relationships, they argue.

Also in this camp are numerous business groups that have renewed support for the United States to join the deal, including the Business Roundtable, the U.S. Chamber of Commerce, the National Association of Manufacturers, and the American Farm Bureau. These and other business associations

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told Biden Administration officials in February 2022 that “U.S. industry and agriculture continue to support a comprehensive approach to trade, technology, and commerce in the Indo-Pacific, such as the CPTPP.”¹⁴

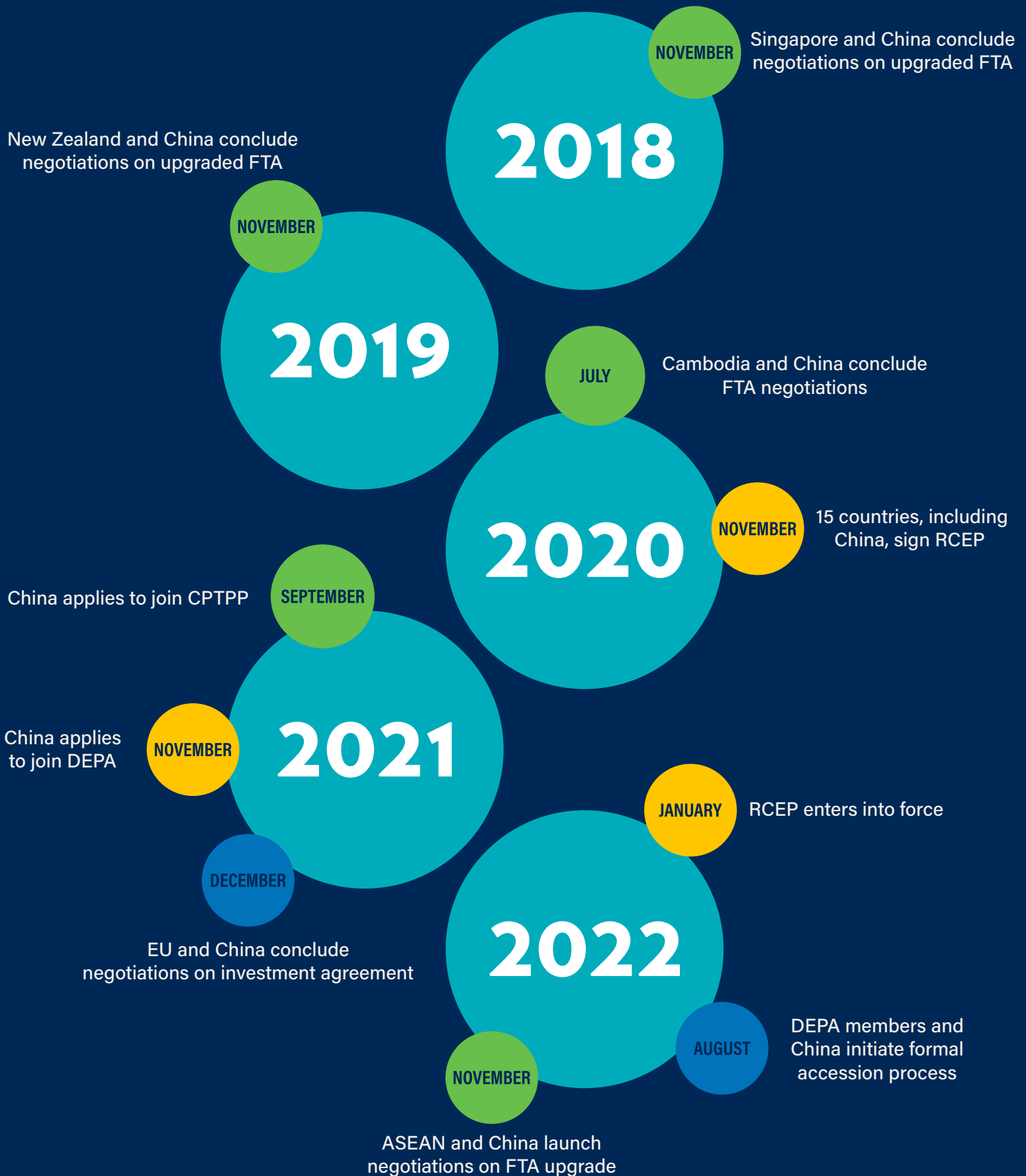
Arguments for reengagement from Congress and the business community often emphasize the concern that the U.S. exit from the TPP has reduced the competitiveness of U.S. exports in the Asia-Pacific region. According to this logic, as tariffs between CPTPP members fall toward zero, U.S. producers are increasingly at a disadvantage because they face higher tariffs on a range of goods. Beyond this pricing disadvantage, common standards and regulatory policies among CPTPP members for heavily regulated products such as medical equipment, chemicals, consumer goods, and organic foods are likely to tilt regional supply chain purchases away from the United States.

Major U.S. allies and existing CPTPP members, too, have weighed in. Japanese Prime Minister Fumio Kishida, like his predecessors, has encouraged the United States to return to the CPTPP.¹⁵ New Zealand Prime Minister Jacinda Ardern told members of the U.S. Congress that the CPTPP is the best way for the United States to engage with the Asia-Pacific region economically,¹⁶ and Singapore Prime Minister Lee Hsien Loong has said that his country “would dearly love to see them come back.”¹⁷

NO SIMPLE PATH BACK

But even if a growing camp of policymakers as well as members of the public are warming to the idea of the United States rejoining the CPTPP, others remain staunchly opposed. The opposition camp includes former U.S. Trade Representative Robert Lighthizer, who argued in March 2022 that the agreement was “oversold” from the start and would further erode American manufacturing by driving more U.S. jobs and supply chains offshore.¹⁸ Lighthizer contends that the CPTPP is unnecessary because the United States already has free trade agreements with six of the eleven members, including almost every major economy party to the deal except Japan. He also outlines what he contends are key problems with the agreement, including the deal's existing provisions on rules of origin, labor and the environment, its waivers from “Buy America” requirements, its lack of currency and sunset provisions, and its financial services carve-outs.

China Filling the Void: Beijing's Key Trade Activities Since CPTPP Signing



Many prominent progressives and workers' rights advocates also remain staunchly opposed to the deal. During the 2020 presidential campaign, Senators Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) asserted that rejoining the CPTPP would be demonstrably bad for the interests of American workers.¹⁹ In April 2022, Public Citizen's Lori Wallach told a congressional committee that the CPTPP represents a failed trade model and its premises and provisions "must be altogether replaced with rules designed to promote, not undermine, employment, resilient supply chains, domestic economic security and infrastructure, climate, public health, and other goals."²⁰

In short, there is no conceivable scenario in which the United States could sign onto the CPTPP as it exists today. Strong opposition from both sides of the political spectrum to key elements of the deal would prevent congressional approval.

The deal as currently written is also outdated. Most of the provisions were negotiated a decade ago, and as opponents of rejoining make clear, U.S. trade priorities have evolved considerably in the intervening years in areas such as rules of origin, labor, and the environment. Major trading countries, including the United States itself, have negotiated agreements in recent years that better reflect these realities and achieve higher standard commitments on various fronts. The Digital Economy Partnership Agreement (DEPA) and the U.S.-Japan Digital Trade Agreement, for example, address a variety of emerging issues tied to new technologies. The United States–Mexico–Canada Agreement (USMCA) and the EU–New Zealand trade agreement offer higher standard environmental provisions.

The USMCA in particular could provide a roadmap for how the CPTPP could be updated. Much like the TPP, the original NAFTA faced strong domestic opposition until it was renegotiated during the Trump Administration. Even President Obama, in making the case for the TPP, routinely underscored its differences from NAFTA, which he classified as a legacy trade agreement that had

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hurt U.S. interests. Like Trump, Obama had hoped to deliver a renegotiated NAFTA through the original TPP, which included Canada and Mexico, to improve labor rights and environmental protections. Ultimately, the Trump Administration was able to renegotiate NAFTA to address long-standing concerns. And although USMCA did include certain novel provisions, more than half of its text was directly based on the CPTPP.

Despite these long-standing concerns about NAFTA among its many members, Congress overwhelmingly supported the USMCA. Indeed, support for the agreement was one of the most bipartisan in history. It passed the House by a vote of 385–41 and earned support from all but 10 senators. The

AFL-CIO endorsed the renegotiated deal as "a vast improvement"²¹ and Public Citizen praised some of its revisions.²² In light of this broad support, the USMCA is viewed by many as the new template for what future U.S. trade agreements should accomplish. Not all USMCA revisions would be workable changes to seek with CPTPP member countries, but most offer a solid basis for shaping U.S. proposals for rejoining the CPTPP.

In this context, it is also notable that the United States had existing trade agreements with both Canada and Mexico before negotiating the highly vaunted USMCA, dispelling the argument that it is somehow not worthwhile to improve dated agreements with current partners. Indeed, U.S. agreements with Australia, Chile, Peru, and Singapore are all 15–20 years old and in need of updating. There are also numerous CPTPP parties with which the United States does not have a comprehensive trade agreement, including Japan, Malaysia, New Zealand, and Vietnam. Finally, the United States does not have agreements with some key economies seeking to accede to the CPTPP, such as the United Kingdom and Taiwan, and could miss out on that opportunity if it is not at the table.

In addition to considering how to improve the CPTPP based on changes to the U.S. trade policy made in the USMCA, the United States should also consider how to enhance the current text to better address challenges tied to China's rising influence on the regional and global economies. These include, but are not limited to, Beijing's support for and reliance on powerful state-owned enterprises, its use of excessive industrial subsidies and other types of financial assistance to promote its own industries at the expense of those of competitors, its trade-distorting excess capacity in a range of sectors, and its use of economic coercion.

But all potential targets for discussion and renegotiation also must reflect the reality that while CPTPP members would strongly welcome the United States back to the agreement, they undoubtedly will have limits in terms of both the number of changes they would negotiate and the substance of the changes. CPTPP members will not unanimously endorse every U.S. position and proposal. Washington must contend with the reality that other CPTPP member countries have their own perspectives and politics and, therefore, should be flexible about how its goals are achieved, either in the text or through other mechanisms, such as U.S. implementing legislation or side letters. The next section of this paper identifies and discusses proposed revisions that would make the CPTPP more aligned with U.S. interests.

While CPTPP members would strongly welcome the United States back to the agreement, they undoubtedly will have limits.

CORE ISSUES FOR REVISION

In considering how to revise the CPTPP to meet U.S. interests, we focused on priority issues that we believe are necessary to make reentry viable. In this regard, our recommendations do not reflect all potential changes that could be made to improve or modernize the agreement, and many participants in our task force suggested meritorious ideas not reflected in this paper. Of course, once the United States is back at the table, other issues could be worth revisiting. However, our recommendations are intended to focus on the most critical issues.

For each issue, we outline its significance, its treatment in the CPTPP text, and our recommendations based on task force discussions and consultations with a wide range of stakeholders and interested parties.

1. RULES OF ORIGIN

Rules of origin (ROOs) are essential to assessing tariffs, determining duty-free eligibility, and otherwise enforcing trade rules. Rules that favor products and content from trade agreement partners help ensure that the benefits of the agreement flow to those that have undertaken its commitments.

Key U.S. domestic stakeholders have raised substantial concerns with the CPTPP's rules of origin, particularly around autos, trucks, and vehicle parts. These rules established a 45 percent regional value content (RVC) requirement for vehicles, and a 35–45 percent RVC for parts. Critics argue that if the United States were a CPTPP member, this floor could allow autos with a significant amount of content not originating from CPTPP member countries, including content from China, to enter the United States duty-free. This would undermine the U.S. auto industry while providing benefits to countries that are not part of the agreement.

To secure domestic support for a U.S. return to the CPTPP, substantial modifications to the CPTPP's rules of origin are necessary.

Based on similar concerns, the U.S. government made strengthening rules of origin a key negotiating priority in the USMCA. Ultimately, the United States, Canada, and Mexico established a 75 percent RVC requirement for passenger vehicles, light trucks, and certain auto parts. The USMCA also includes associated rules on inputs such as steel and aluminum, as well as minimum wage requirements.

To secure domestic support for a U.S. return to the CPTPP, substantial modifications to the CPTPP's rules of origin are necessary. For certain members, such as Canada and Mexico, the United States should maintain the same high standards included in the USMCA and should not renegotiate those issues. For non-USMCA members, the United States would ideally seek to raise standards by negotiating a similarly high RVC that explicitly caps content from nonmarket economies such as China.

The U.S. interest in modifying the auto rules of origin must be considered in light of the fact that current participants, particularly Japan, view the CPTPP's existing rules as a key benefit of the agreement and in line with their own global business models and economic imperatives. Therefore, they may be reluctant to make substantial changes. In light of this potential tension between the

United States and Japan, we have suggested other options that would address U.S. concerns while accommodating those who do not want to change the rules among current members. For example, the United States could negotiate side letters with specific countries willing to increase the RVC for imports to the United States while withholding market access in this sector for countries that would not. Alternatively, the United States could simply seek to join the CPTPP without taking on any new market access commitments for autos or trucks altogether.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Fix the CPTPP automotive rules of origin in one of the following ways: An opportunity not fully realized?*
 - *Seek a higher, simplified RVC for CPTPP rules (above the current 45 percent for vehicles), with a low ceiling for qualifying content from nonmarket economies (NMEs) that are not part of the agreement.*
 - *Maintain current CPTPP automotive rules among existing members but include a commitment (in side letters) that for the United States, only automotive imports that meet USMCA-level rules of origin will be eligible for U.S. tariff preferences under the CPTPP.*
 - *Maintain current CPTPP automotive rules among existing members, but for the United States exclude trucks and autos.*
- *Establish a CPTPP committee to review rules of origin more broadly with an emphasis on limiting NME content from nonparticipant countries.*

2. LABOR

A long-standing complaint of U.S. labor interests is that trade deals too often benefit big business at the expense of the American workforce. Workers oftentimes feel undercut by market access provisions, especially with trading partners with less expensive labor costs or less robust worker protections. The current trend in the United States is to make workers' interests central in trade policy, ensuring that elements of agreements that protect and improve workers' rights are as strong and enforceable as possible. This helps ensure that U.S. workers and businesses can compete on a level playing field around the world.

The TPP labor chapter achieved noteworthy progress compared to previous agreements by requiring members to adopt and maintain fundamental worker rights and working conditions. Additionally, the United States negotiated enforceable labor action plans for Brunei, Malaysia, and Vietnam to address specific issues of concern. Even though at the time the TPP included the strongest labor provisions ever negotiated by the United States, it still fell short of demands by U.S. labor groups.

By contrast, the labor community overwhelmingly endorsed the USMCA's labor provisions, which went even further than the original TPP. One key element of the USMCA is the rapid response mechanism, which allows special panels to be set up to quickly investigate labor complaints, expedite dispute resolution between workers and employers, and recommend steps to improve compliance by companies. This mechanism has already been successfully utilized numerous times under the USMCA, yielding positive results for U.S. workers.

In improving the CPTPP, the United States should draw on the USMCA's rapid response mechanism to address concerns regarding the labor standards in certain CPTPP members. At the same time, the United States should seek to update and strengthen the bilateral implementation plans

on labor issues that it previously negotiated with Brunei, Malaysia, and Vietnam in 2016 and link tariff phaseouts to full compliance with these agreements. This will ensure that these countries follow through with their commitments.

In improving the CPTPP, the United States should draw on the USMCA's rapid response mechanism to address concerns regarding the labor standards in certain CPTPP members.

The United States should also consider strengthening enforcement provisions to make labor violations easier to establish in any disputes brought under the CPTPP. As drafted, the CPTPP and previous U.S. free trade agreements

(FTAs) require a showing of systemic failure for a determination that labor obligations had been violated, while the USMCA has an easier burden for a complainant to meet and only requires episodic failures. The United States should modify the language in this agreement to follow the USMCA standard, which was a key change that helped secure labor's support for that agreement.

The USMCA also includes important advancements on violence against workers and forced labor. It requires members to address violence and threats of violence, whereas the CPTPP does not mention this issue. And while the CPTPP discourages members from importing goods made with forced labor, the USMCA bans trade in such goods while encouraging members to cooperate in identifying problematic goods and supply chains. In this area, the United States should seek stronger commitments than those in the original TPP.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- Develop updated and fully enforceable action plans with certain CPTPP countries to ensure the implementation of strong labor standards.
- Link tariff phaseouts for U.S. imports to full compliance with labor obligations.
- Enhance the enforcement tools for CPTPP labor provisions, drawing from the USMCA rapid response mechanism and experience gained from its usage.
- Strengthen enforceability of labor commitments by clarifying the meaning of a “manner affecting trade” needed to establish a violation of the agreement.
- Seek strengthened commitments to facilitate cooperation and information sharing to identify sources of forced labor and target imports made with forced labor.

3. ENVIRONMENT

As consensus continues to grow for countries to work together to address climate change issues, pressure has mounted for trade agreements to play a central role in this strategy. It is also important that United States use trade agreements to push for high environmental standards internationally to ensure a level playing field for U.S. businesses and workers, similar to the standards for labor. The United States currently emphasizes a blend of hard commitments and environmental cooperation as a core component of international economic engagement, and many of our trading partners likewise increasingly prioritize environmental concerns in the trade context.

In its environment chapter, the CPTPP calls for parties to effectively enforce their environmental laws and fulfill their obligations under multilateral environment agreements to which they are signatories. It includes enforceable obligations to enhance wildlife, timber, and fisheries protection and combat illegal trade, and it promotes increased trade and investment in environmental goods and services. The chapter also implicitly addresses climate change with innovative provisions aimed at lowering emissions and protecting the ozone layer and the marine environment.

The environment chapter of the USMCA builds on the CPTPP provisions in ways that could be replicated. The USMCA enhances commitments around ocean conservation, air pollution, energy efficiency, and other areas. The USMCA also fixes a flaw in the CPTPP that made it difficult to enforce environmental violations by including a rebuttable presumption that violations of environmental obligations negatively affect trade, making it easier to pursue enforcement measures.

Negotiating reentry into the CPTPP also offers the United States an opportunity to advocate for important updates that reflect sustainability priorities and concerns such as carbon border adjustment measures, clean energy, and a circular economy. Additionally, it provides an opportunity to review the current multilateral environmental agreements (MEAs) covered in the CPTPP with the aim of exploring whether new commitments may be in order. Many of these proposals are likely to garner support from existing CPTPP members also concerned with environmental degradation.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Include provisions to address marine debris, environmental impact assessments, enhanced fisheries commitments, air pollution, and harmonized energy performance standards in line with the USMCA commitments.*
- *Update and accelerate tariff and non-tariff barrier commitments to bolster trade in environmental goods and services among CPTPP members and diversify the supporting supply chains.*
- *Strengthen enforceability of environment commitments by clarifying the meaning of a “manner affecting trade” needed to establish a violation of the agreement.*
- *Seek new provisions or modifications to existing CPTPP obligations to promote renewable energy capacity and bolster the use of renewables.*
- *Consider adding new commitments to enforce key MEAs.*
- *Establish a working group to explore carbon emissions measures, including common carbon accounting metrics; emissions monitoring systems; developing countries’ needs; and regional approaches to carbon leakage, including carbon border adjustment measures.*
- *Establish principles and best practices to achieve a circular economy focused on reverse supply chains that facilitate trade in secondary raw materials and used/recyclable goods.*

4. NONMARKET ISSUES

Since the CPTPP was negotiated, China has doubled down on a range of unfair nonmarket trade practices and has dramatically increased the role of the state in its economy. This trend appears likely

to continue in light of President Xi Jinping's consolidation of power in China and his unwavering commitment to make nonmarket principles central to Beijing's economic agenda. It is therefore critical to strengthen the CPTPP's disciplines related to such practices. Although China is not a CPTPP member, setting high standards in the CPTPP will help establish global norms on these issues and elicit greater cooperation among CPTPP members to respond to China's trade-distorting actions. It will also ensure that CPTPP members with large state sectors do not replicate China's actions.

Some of the key ways in which China and others distort global trade and harm U.S. workers include support for state-owned enterprises (SOEs), excessive industrial subsidies, forced technology transfers or requirements for joint ventures as a condition of market access, moving production to third countries to avoid trade remedy measures, and third-country subsidization. This behavior has resulted in the global excess capacity that has plagued the steel, aluminum, and solar sectors, among others, as well as the illicit acquisition of sensitive U.S. technologies.

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The CPTPP attempts to deal with some of these issues, including through what were at the time groundbreaking provisions on SOEs. However, the CPTPP's definition of SOEs is too limited and focuses on majority ownership in an enterprise instead of fully capturing what constitutes government ownership and

control. As a result, SOEs in member and nonmember states could obtain benefits from the agreement and continue to operate on an unlevel playing field. The USMCA effectively fixed this shortcoming by including a more expansive definition of SOEs that includes situations in which a government controls an enterprise through indirect or minority ownership; this key enhancement should be added to the CPTPP.

The CPTPP's provisions neither define or discipline excess capacity nor prohibit members from requiring technology transfer or forced joint ventures as a condition of market access. Some progress has been made on these issues in recent years, including through the establishment of international fora on steel and aluminum; the trilateral agreement involving the United States, the European Union, and Japan; as well as the Phase One trade deal with China. This progress should be built upon in the CPTPP.

Finally, the CPTPP does not address other emerging issues such as rampant trade remedy circumvention or third-party subsidies. Given the limited nature of international negotiations on either of these issues, it could be difficult to immediately incorporate such ideas into the CPTPP's text. However, U.S. implementing legislation should address these issues while the United States considers how to effectively seek international trade discipline on these problems.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Strengthen the CPTPP's definition of SOEs to include cases where a government holds the power to control an enterprise through any ownership interest, including indirect or minority ownership, and exercises undue influence.*
- *Include provisions to address excess capacity, especially in the steel and aluminum sectors.*

- *Prohibit members from requiring technology transfer or joint ventures as a condition of market entry.*
- *In U.S. implementing legislation, include provisions to strengthen U.S. trade remedies (e.g., address circumvention, third-party subsidies, and dumping).*

5. CURRENCY MANIPULATION

The U.S. Treasury Department has repeatedly flagged some CPTPP countries, including Japan, Malaysia, Mexico, Singapore, and Vietnam, for their currency manipulation practices. Critics of the CPTPP contend that currency manipulation by these member countries undermines market access commitments and has contributed to U.S. trade deficits and the loss of U.S. jobs.

When the TPP text was originally released, it was coupled with a nonbinding declaration agreed to by finance ministers to address unfair currency practices, but that side agreement was subsequently dropped by CPTPP members. The USMCA features a chapter that goes much further than the original TPP text, committing members to maintain market-determined exchange rates, follow transparency and reporting requirements, and hold annual meetings to monitor implementation. It also provides for a bilateral dispute settlement for violations of transparency and reporting commitments, thereby ensuring that these rules are fully enforceable.

Addressing exchange rate issues in the CPTPP text will be necessary to consolidate U.S. domestic support for any effort to rejoin the agreement. Resurrecting the joint declaration would not be deemed sufficient now that a subsequent U.S. trade agreement includes stronger disciplines in the text itself.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Include binding and enforceable provisions regarding currency manipulation, drawing on the USMCA's provisions that require countries to refrain from competitive devaluations while increasing transparency and accountability.*

6. INVESTOR-STATE DISPUTE SETTLEMENT (ISDS)

Support for investor-state dispute settlement provisions has waned over time because of concerns that these mechanisms encroach on the rights of sovereign governments. Even during the TPP negotiations, the debate over protections for investors proved controversial. The final CPTPP text guarantees a basic set of investor protections, but several of the original ISDS provisions were suspended once the United States exited the TPP. Even with the inclusion of language more deferential to states' rights, there was still dissatisfaction with the mechanism. New Zealand opted out of ISDS commitments with most countries through a series of side letters with individual CPTPP members.

At the same time, the United States continues to recognize that enhanced protection for U.S. investors remains of particular importance in certain countries with less stable domestic legal regimes. For example, recent actions by Mexico in the energy sector highlight the usefulness of such protections in certain key sectors.

The USMCA took a flexible and novel approach to this issue by tailoring the types of protections available to U.S. investors to the specifics of the situation in Canada and Mexico. Between the United States and Canada, the USMCA offers no ISDS protections. On the other hand, for disputes involving Mexico and the United States, investors have legal recourse when their investments fall within a list of five “covered” sectors where concerns had been raised: oil and gas, power generation, telecommunications, transportation, and infrastructure. The USMCA also requires investors to first commence legal proceedings in national courts and precludes them from filing claims for indirect expropriation, measures that have been criticized as potentially undermining regulatory autonomy.

The targeted and flexible approach of the United States within the USMCA offers a potential path forward for the CPTPP where ISDS only applies to specified sectors and countries with unsophisticated legal regimes where expropriation concerns are real. In light of the need to tailor its approach on a country-by-country basis, the United States should pursue this policy objective through an exchange of side letters with individual CPTPP members either clarifying nonreciprocal application of ISDS or agreeing on targeted sectoral coverage.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *For developed countries, exchange letters to memorialize reciprocal non-application of ISDS provisions.*
- *For developing countries, exchange letters to focus ISDS commitments on specific sectors and problematic types of behavior.*

7. GOVERNMENT PROCUREMENT

Government procurement chapters in trade agreements, including the CPTPP, have traditionally focused on opening these markets to international competition. However, in recent years, U.S. views have shifted in favor of policies that strengthen domestic procurement preferences and provide incentives for domestic production.

In recent years, U.S. views have shifted in favor of policies that strengthen domestic procurement preferences and provide incentives for domestic production.

The CPTPP government procurement chapter aligns closely with the WTO’s plurilateral Government Procurement Agreement (GPA). It sets helpful procedural standards for government purchases, requires fair and transparent procurement rules, and stipulates that members apply national treatment obligations when assessing tenders and awarding contracts. However, negotiators had to account for the fact that only five CPTPP countries (Australia, Canada, Japan, New Zealand, and Singapore) were full members of the WTO GPA agreement and other countries were less prepared to meet GPA-like terms. This discrepancy resulted in a flexible approach with less stringent requirements and more generous exceptions for certain countries, particularly with respect to coverage. The transition periods and terms for Malaysia and Vietnam, developing countries signing onto government procurement commitments for the first time, were also much more liberal than allowances extended to developing countries joining the GPA.

The USMCA reflects the mounting skepticism of traditional government procurement policy in Washington, with the United States and Canada awarding each other no more generous terms than

those provided under the GPA. The United States and Mexico negotiated separate provisions that did not significantly differ from the procurement provisions under NAFTA.

The Biden Administration has supported “Buy American” policies by further raising the domestic content required for preferences and narrowing conditions for granting waivers to the rules. With government procurement policy now linked more closely to supply chain vulnerabilities and national security concerns, both sides of the aisle increasingly favor preferences for domestic production. In light of the more restrictive trends in international government procurement policies, the United States should seek narrower government procurement commitments in an effort to maintain policy space for further domestic measures. Specifically, the United States should seek an exchange of letters with individual CPTPP members to scale-back its original TPP entity coverage. At the same time, the United States should support the maintenance of CPTPP procedural and transparency provisions on government procurement.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *For CPTPP members that are WTO GPA signatories, exchange letters to limit reciprocal coverage commitments to WTO GPA commitments unless agreed otherwise.*
- *For CPTPP members that are not WTO GPA signatories, agree on a two-year negotiating time frame to develop a satisfactory balance of coverage concessions.*

8. DIGITAL TRADE

Digital trade is one of the most significant forces shaping global commerce and continues to evolve at a rapid pace. At the time of its entry into force, the CPTPP had some of the most ambitious digital trade commitments to date, but these provisions were first negotiated more than 10 years ago. Since that time, global developments, including the COVID-19 pandemic, have accelerated international trade in digital goods and services, increasing the need for more comprehensive digital trade provisions.

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Several agreements negotiated after the CPTPP have built on its digital commitments. The USMCA includes many CPTPP terms, along with updates to provisions on cross-border data flows, data storage localization, cybersecurity, and source code protections. It also narrows or eliminates several CPTPP carve-outs. The Digital Economy Partnership Agreement (DEPA) between New Zealand, Chile, and Singapore and the U.S.-Japan Digital Trade Agreement offer additional ideas for updating the CPTPP, such as new protections for cryptographic algorithms and cyphers.

In addition to these agreements, the Indo-Pacific Economic Framework’s (IPEF) trade pillar includes yet-to-be-negotiated provisions expected to advance U.S. digital priorities. Negotiators for the United States are expected to pursue some noncontroversial goals, such as expanding small- and medium-sized enterprises’ access to digital tools. Thornier issues may include growing philosophical divergences over how to balance goals such as ensuring the free flow of data and preserving consumer data privacy. IPEF members will be negotiating the details of new rules, and IPEF’s direction on digital issues should inform considerations in the CPTPP context.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Modernize the CPTPP's E-Commerce chapter to incorporate certain enhancements and updates from the USMCA's Digital Trade chapter, such as limiting exceptions that undermine the application of data flow and localization provisions and exempt the financial services sector.*
- *Draw from IPEF innovations that respond to worker, consumer, and small- and medium-sized business concerns.*

9. INTELLECTUAL PROPERTY RIGHTS (IPR)

Ensuring strong intellectual property rights (IPR) protections and enforcement provisions has been a long-standing bipartisan priority in Washington. This largely remains true; however, in recent years, concern about widespread access to medicines has led the United States to step back from long-held positions in a few instances, including by dropping data protection provisions for biologics in the USMCA and supporting the waiver of intellectual property protections for vaccines at the WTO.

During the original negotiation of the TPP, the U.S. interest in ensuring strong IPR protections and enforcement mechanisms was a major sticking point. The United States pushed hard for stronger protections, arguing they were needed to sustain and encourage innovation and advancements. When the United States withdrew from the TPP, the remaining countries suspended numerous provisions in the IPR chapter, including copyright protections, patent term extensions, protections for internet service providers, improved trade secret protections, and criminal penalties required for specific IP violations. One of the more controversial provisions, data protection terms for biologics, was also suspended.

The USMCA revives nearly all of the suspended CPTPP provisions and even builds on some, including more extensive protections related to national treatment, copyrights, patents, and trade secrets. The United States should focus its efforts on reinstating these suspended provisions and even strengthening them where possible.

The USMCA notably leaves out the provisions related to data protection terms for biologics. U.S. negotiators should explore whether the suspended TPP provision—which included five years of data protection for biologics coupled with additional time for regulatory procedures or administration actions—is a viable way forward in terms of domestic and international support or whether a USMCA approach is more appropriate.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Reinsert suspended TPP provisions that were also included in the USMCA such as the following:*
 - *Patent term adjustment when there is unreasonable or unjustifiable delay in issuance of a patent or market approval process.*
 - *Protection of undisclosed data from unfair use.*
 - *Requiring civil remedies and criminal penalties when technologies are circumvented to gain illegal access to copyright protect materials.*

10. SUPPLY CHAINS

The supply shortfalls of the COVID-19 pandemic, coupled with growing concerns about overreliance on China, have dramatically increased awareness in the United States of the pitfalls of prioritizing cost and efficiency in building supply chains. More recently, supply chain disruptions caused by the ongoing Russia-Ukraine conflict have brought even more attention to vulnerabilities and risks. Future supply chain crises are likely considering the lack of diversification in the supply chain for minerals such as silicon, cobalt, copper, nickel, and lithium that are critical for semiconductors, batteries, and other technologies.

Supply chain concerns have resulted in a call for both reshoring of supply chains and “friendshoring,” the development of supply chains with like-minded trading partners. While the United States has offered incentives for reshoring in recent legislation, it is not feasible to establish domestic supply lines for every critical good. Trade agreements such as the CPTPP can play a key role in helping build supply chains with trusted partners and allies by aligning around shared trade rules, establishing common rules of origin, and eliminating trade barriers. Trade facilitation provisions, lower duties, services commitments, and other common rules also strengthen supply chain links between member countries. picked up⁸⁵ at the same time as some exporting goods saw⁸⁶ significant price increases.

In light of the urgency of addressing supply chain vulnerabilities, more can be done to promote the stability and resilience of supply chains, and the United States should seek to add a new supply chain chapter to the CPTPP. Some of the ideas that the United States is pursuing in the IPEF could form the foundation of this chapter, including working with CPTPP countries to reduce the impact and scope of supply chain disruptions, identify vulnerabilities, and establish mechanisms to address them. The United States should also seek to apply lessons learned from COVID by establishing “fast lanes” for trade for essential goods and ensuring that CPTPP members do not impose export restraints on one another in times of crisis. More broadly, the United States should also consider sectors, such as medical goods and emerging technologies, where advanced tariff staging and harmonized standards should be prioritized. Finally, the United States could also propose a working group with a mandate to make supply chains more sustainable, including by focusing on critical minerals in light of their growing importance in a diverse range of products, the environmental costs of extracting and processing these materials, and the lack of diversification in those supply chains.

Trade agreements such as the CPTPP can play a key role in helping build supply chains with trusted partners and allies by aligning around shared trade rules, establishing common rules of origin, and eliminating trade barriers.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- Add a new chapter to the CPTPP on supply chains to do the following:
 - Coordinate responses to supply chain disruptions by identifying existing and potential chokepoints and vulnerabilities and establish rules and mechanisms to address them, including an early warning and crisis management mechanisms, drawing from IPEF discussions.

- Establish “fast lanes” for trade of essential goods between CPTPP members to keep borders open to trade during times of shortages and crises.
- Limit the use and duration of export restrictions between CPTPP members, building on WTO commitments.
- Initiate discussions on developing sector- or product-specific supply chain agreements among CPTPP members that would include harmonized standards, accelerated tariff staging where appropriate, elimination of non-tariff measures, and trade facilitation measures.
- Establish a supply chain working group to promote sustainability in supply chains, including promoting cooperation on critical mineral resiliency, including new sources of mining extraction and sustainable processing methods.

11. ECONOMIC COERCION

Coercive measures such as withholding supplies of certain goods or restricting imports from a trading partner to exert political pressure are a growing threat to the rule-based trading system and to the economic security of countries worldwide. These measures can include formal or unofficial import and export restrictions, consumer boycotts, and tourism boycotts. Chinese economic coercion, in particular, is on the rise. Numerous CPTPP members, including Australia, Canada, and Japan, have experienced China’s coercive tactics in recent years.

Reentry into the CPTPP offers the United States an opportunity to work with members to define the growing problems associated with economic coercion

Trade agreements, including the CPTPP, do not directly address these practices. Reentry into the CPTPP offers the United States an opportunity to work with members to define the growing problems associated with economic coercion and shape appropriate responses. These responses should be twofold:

collective actions against the country exercising the coercion and assistance to the CPTPP member experiencing coercion. There is no one-size-fits-all approach for addressing this matter, and different responses will be required depending on the scope and nature of the coercion based on the needs and interests of the targeted country. Therefore, CPTPP members should develop a menu of possible tools to address the specific situation at hand.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *Include a menu of options for (a) condemning and acting against countries pursuing economic and trade coercion and (b) assisting other CPTPP member countries subject to such coercion.*

12. CONDITIONS FOR ENTRY, REVIEW, AND WITHDRAWAL

In any trade agreement, certainty is important to incentivize economic activity and the relocation of supply chains consistent with the agreement’s terms. At the same time, it is important to have built-in mechanisms that allow for updates to address unexpected developments and consequences, advances in technology, or new economic trends. And in the most extreme circumstances, it is important that countries are able to expeditiously withdraw from an agreement if they believe it no longer meets their interests.

Historically, trade agreements—including the CPTPP—have emphasized certainty with more limited provisions around review or withdrawal. The CPTPP stipulates that members will conduct a review to assess whether or not it is yielding the expected benefits within three years of the CPTPP’s entry into force and, at minimum, every five years after that. A commission is empowered to consider implementation or operation issues, as well as proposals to amend or modify the agreement. But there is no language indicating when changes must be made, what happens if the commission’s members disagree in their review of various matters, or how the outcome of a review could affect the agreement. As with other U.S. trade agreements, any member state can withdraw from the CPTPP six months after it provides written notice, but there is no set of circumstances under which the agreement expires for all members.

The USMCA introduced a more clear-cut review mechanism, requiring members to review the agreement after six years and actually terminating the deal sixteen years after its entry into force unless each of the member states “confirms it wishes to continue this Agreement.”²³

While the USMCA approach provides significant leverage to the United States to push for changes necessary to ensure the agreement is meeting its objectives, many in the business community have argued that this process creates significant uncertainty that can hamper business decisions. Additionally, it is unlikely that any of the CPTPP participants would agree to a termination provision in an agreement in which they currently are parties and the United States is not.

In an attempt to balance the benefits of a process that incentivizes meaningful changes with the need for certainty, we recommend creating a U.S. domestic review mechanism that goes far beyond what has ever been included in past implementing legislation. This approach will give the Administration and Congress a key role in continuing to assess the progress of the agreement in meeting U.S. objectives and allow them to assert leverage without pursuing a policy that has downsides and is unlikely to be accepted by other countries in any case.

In addition, U.S. implementing legislation should make clear that the United States will not enter or remain in the agreement were China to join, recognizing that as a CPTPP member the United States would have veto power over such a development.

Consistent with this discussion, we recommend the following improvements to the CPTPP:

- *In U.S. implementing legislation, include language clarifying that the United States will not join the CPTPP if China becomes a member and will not support efforts by China to accede.*
- *In U.S. implementing legislation, require domestic reviews of the agreement every five years. As part of this review, require the president to submit a report to Congress outlining any improvements necessary to ensure the agreement continues to meet U.S. objectives. If the president determines after negotiations that these improvements cannot be achieved, Congress could take an up-or-down vote on remaining in the agreement.*

CONCLUSION

Rejoining the CPTPP will not be easy. It will require a series of revisions, including many put forward in this paper, to better reflect U.S. interests and developments in U.S. trade policy perspectives. It is also important to fully acknowledge the challenges in generating requisite domestic support and convincing CPTPP partners to accept U.S. requests. Nevertheless, it is a conversation worth having in light of the importance of the Asia-Pacific region to long-term U.S. competitiveness and national security interests, and we are hopeful that this paper will help jump-start this long overdue conversation.

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