



Japan Post: Anti-Reform Law Clouds Japan's Entry to the Trans-Pacific Partnership

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Our last policy brief on this long-running saga recounted political machinations, late in 2011, to reverse the Koizumi era reforms of Japan Post, a giant among state-owned enterprises (SOEs).¹ As a brief background:

- Japan Post is a conglomerate of five companies: the parent, Japan Post Holdings; two subsidiaries concerned with operating post offices and delivering mail, namely Japan Post Network and Japan Post Services; and two giant financial arms, Japan Post Bank and Japan Post Insurance.

1. Gary Clyde Hufbauer and Julia Muir, *Japan Post: Retreat or Advance?* Policy Briefs in International Economics 12-2. Washington: Peterson Institute for International Economics. Available at www.piie.com/publications/interstitial.cfm?ResearchID=2021.

- Japan Post ranks among the largest SOEs on the planet, combining the world's largest bank and insurance operations with postal delivery under the umbrella holding company. Japan Post Bank holds approximately ¥177 trillion in deposits (roughly \$2.2 trillion) and Japan Post Insurance has roughly ¥7.9 trillion (about \$98.9 billion) of annual premium income. Together these two companies have assets of more than \$3 trillion. If Japan Post cannot be made to operate on a level playing field with private firms, who can?
- Japan Post channels 80 percent of the financial savings of its Japanese account holders into Japanese government bonds, thereby ensuring gross distortion of Japan's internal capital market.
- Japan Post draws on a number of government privileges—most notably, light regulation and exemptions from statutory prohibitions on strategic combinations—to market its own insurance products in competition with private insurance firms, both domestic and foreign-owned. At the same time, it has been unwilling to offer private insurance products other than through a small number of outlets in its vast postal distribution network.

In 2005, Prime Minister Junichiro Koizumi pushed his landmark bill through the Japanese Diet, aimed at reforming Japan Post abuses and envisaging substantial privatization by 2017. Subsequent Japanese governments have toyed with the idea of reversing the Koizumi reforms. However, when we last visited this saga in January 2012, it seemed possible that Diet members might preserve essential features of the Koizumi reforms, eventually breaking the stranglehold of Japan Post which controls over 30 percent of the Japanese banking industry and just over 20 percent of the domestic insurance market.

As it turned out, the opposition Liberal Democratic Party (LDP)—putting current political advantage ahead of its past pro-reform stand—joined anti-reform forces in the ruling Democratic Party of Japan and the New Komeito Party. This alliance submitted the Bill to Partially Revise the Postal Privatization

Law through the Diet on March 30, 2012. The anti-reform bill was passed by the Upper House on April 27, 2012, with only one absenting vote from the LDP, and became law.

SERIOUS CONSEQUENCES FOR TPP ENTRY

The revised law turns back the clock on the Koizumi reforms. But before delving into legislative details, it is important to examine the serious consequences for Japan's potential participation in the Trans-Pacific Partnership (TPP) talks.² Prime Minister Yoshihiko Noda is known as an advocate of trade liberalization. Overcoming the opposition of several cabinet members, Noda has championed Japan's entry to the TPP talks. His interest was signaled to President Barack Obama at the Asia-Pacific Economic Cooperation (APEC) Summit in Honolulu in November 2011. Around the same time, Canadian and Mexican leaders signaled their interest as well.

If all four countries join the talks, the number of TPP participants will rise from nine to thirteen. Each of the potential new entrants faces its own obstacles to TPP membership, but Japan's are most severe. Apart from fielding the second largest economy among TPP countries (after the United States), and thus enlarging the talks from "one elephant" to "two elephants," Japan's participation is hobbled by long-standing barriers: Can the nation liberalize agricultural quotas, auto regulations, and Japan Post? The reversal of Koizumi reforms does not augur well.

A groundbreaking chapter in the TPP will establish rules of the road for state-owned and state-supported enterprises (SOEs and SSEs). While the draft TPP text has not been disclosed, the core principles are likely to include the following:

- SOEs and SSEs will be defined as state-controlled firms that engage in commercial transactions in competition with private firms.
- SOEs and SSEs should buy and sell for commercial consideration.
- SOEs and SSEs should be transparent with respect to their shareholders and organization.
- The national regulator should be nondiscriminatory as between SOEs/SSEs and private firms.
- The national treatment principle must be respected.

2. The revised legislation is only available in Japanese. It is available at <http://www.sangiin.go.jp/japanese/joho1/kousei/gian/180/pdf/t051800061800.pdf>.

Besides violating commitments under the WTO General Agreement on Trade in Services (GATS),³ Japan Post's current operations are clearly inconsistent with the last three SOE principles, and the anti-reform law will indefinitely prolong the conflict. At the very least, as a measure to provide the United States and other TPP participants with confidence over Japan's readiness to join TPP talks, the United States will ask Japan to formally commit that Japan Post will not offer new or modified products in competition with private-sector companies, until a level playing field is established between Japan Post and private banks and insurers (whether Japanese or foreign-owned). In other words, at a minimum, Japan will be asked to commit to a standstill with respect to Japan Post's current product line.

Even if the United States and other TPP parties go easy on Japan Post as a confidence-building measure, it is inconceivable that they will let the revised anti-reform law survive the conclusion of the TPP negotiations

Beyond that, the United States and other TPP participants will ask Japan to exercise its regulatory flexibility to address the objectionable aspects of Japan Post operations, and signal Japan's willingness to put Japan Post on the negotiating table, with a view to rapid compliance with the text of the SOE chapter.

The confidence-building demands of the United States and other TPP parties could be stiffer than those just outlined. Prior to granting Japan a seat at the TPP table, they might insist that Japan clarify the revised law to guarantee private firms a level playing field—also expressed as "equivalent conditions of competition"—when they go head to head with Japan Post. Supplementary Resolutions passed both in the Diet and in the Upper House to accompany the revised law open the door for the prime minister to clarify the revised law to ensure equivalent conditions of competition. However, Supplementary Resolutions do not have the force of law: They are roughly the equivalent of legislative history in the US Congress, meaning they can be ignored. Since Prime Minister Noda pushed the revised law, which has as its main intent new advantages for Japan Post, other TPP members may insist that helpful clarifications take effect in 2012.

Even if the United States and other TPP parties go easy on Japan Post as a confidence-building measure, it is inconceivable

3. The violations are summarized in Hufbauer and Muir, *Japan Post: Retreat or Advance?*

that they will let the revised anti-reform law survive the conclusion of the TPP negotiations. To give Japan Post a pass is to give up on SOE/SSE discipline, and would be contrary to TPP negotiations that advocate a policy of competitive neutrality among public and private enterprises. This is a key element of the SOE/SSE discussion given the substantial presence of SOEs in the Vietnamese and Malaysian economies. Furthermore, given China's fondness for state capitalism and the spread of this model to other emerging-market countries, the threat such practices pose to the global trade and investment order, and the plain fact that TPP is meant to provide a template for eventual deep engagement with China and perhaps at some point the World Trade Organization (WTO) rules applicable globally, Japan Post must return to the path of the Koizumi reforms.

OBJECTIONABLE FEATURES OF THE LAW

With TPP uppermost in mind, we conclude by summarizing the most objectionable features of the anti-reform revised law.

- The revised law mandates Japan Post to maintain indefinitely a network of post offices that offer, on an integrated basis, postal services, banking services, and insurance services. With its unparalleled access to trillions of yen of zero-interest-rate deposits, Japan Post is able to cross-subsidize these activities without limit, denying competitive opportunities for private firms. The mandate should be repealed.
- The revised law practically closes the door on private insurance companies that, in the future, want to offer policies through the Japan Post network. Instead the revised law gives a clear mandate to Japan Post Insurance to sell its own “over-the-counter” insurance policies to postal customers in preference to carrying private-sector products. This provision should be repealed.
- The revised law repeals the Koizumi mandate for Japan Post Insurance (JPI) and Japan Post Bank (JPB) to be fully privatized by September 2017. Instead, the mandate is replaced by a “best efforts” requirement on Japan Post Holdings (JPH) to dispose of shares in JPB and JPI, subject to qualifications that make disposition difficult. Although the Supplementary Resolutions mentioned earlier put greater emphasis on the disposal of shares, their provisions are nonbinding. If the revised law is clarified to ensure equivalent conditions of competition, full privatization would not be essential. Indeed the simplest solution would be for Japan Post to allow the sale of private insurance products through its extensive network. In addition, the Postal Privatization Commission established by the Koizumi reforms must be assured independence and given strong regulatory teeth.
- Under the revised law, once JPH sells at least half of its JPB and JPI shares, these subsidiaries will be allowed to enter new lines of business simply by notifying the prime minister and the minister of internal affairs and communications. The Koizumi law requires prior review by the Postal Privatization Commission and prior approval by the prime minister and the minister of internal affairs and communications. In other words, the new law pulls the teeth of the Postal Privatization Commission, and allows JPB and JPI to breeze past any meaningful review, even though the subsidiaries will remain emblems of state capitalism so long as JPH retains a significant proportion of their shares. This provision should be repealed—or clarified pursuant to the Supplementary Resolutions—and the provisions of the Koizumi law reinstated in practice, so that Japan Post has no advantage over private firms in entering new lines of business or offering new products.

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