

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
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**Trans-Pacific  
Partnership:  
geopolitical  
implications for EU-US  
relations**

AFET



## STUDY

# Trans-Pacific Partnership: geopolitical implications for EU-US relations

### ABSTRACT

The Trans-Pacific Partnership (TPP) and the prospective Transatlantic Trade and Investment Partnership (TTIP), if enacted, will reshape trade and investment flows between the United States, Asia, and Europe. Together, these agreements encompass more than 60 % of the global economy, including the leading industrial economies of North America, the European Union and Japan. TPP is the economic anchor of the US 'pivot' to Asia. TPP is as much a geopolitical project to reinforce US leadership in Asia as it is a deal driven by an economic logic of spurring new sources of trade and investment. The EU has concluded or is negotiating a series of bilateral trade and investment agreements, including with Singapore, Vietnam, Australia, Japan, Malaysia, and New Zealand. But Europe as a whole needs to take a more strategic and coherent approach to Asia, beyond commerce and investment ties, and particularly to unify its approach to China. This is a compelling requirement given both China's enormous economic power and the risks its ascendancy poses to the liberal international order. Beyond the politics around both trade deals, however, lies a conviction among trade liberalisers in both the Atlantic and Pacific theatres that the agreements could provide a positive shock to a global economy badly in need of new engines of growth.

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# Table of contents

Executive summary	5
1 Introduction	6
2 TPP in the context of US strategy towards Asia	8
2.1 Continuity more than change	8
2.1.1 The rise of Asia: some numbers	9
2.2 The contest to write Asia's economic rules: whose model?	11
2.2.1 America's preference for open regionalism and the Chinese challenge	12
2.2.2 Balancing economic dependency: Asian hedging strategies & the role of the United States	14
2.2.3 China and TPP: geo-economic competition with America?	15
2.2.4 The ultimate prize for TPP: Chinese inclusion	16
3 The content of the TPP negotiations, stakeholder reactions and the ratification process	18
3.1 TPP negotiating objectives and final agreement outcomes for key countries	19
3.1.1 United States	20
3.1.2 Negotiating objectives: Japan	25
3.1.3 Negotiating objectives: Canada	26
3.1.4 Negotiating objectives: Australia & New Zealand	27
3.1.5 Negotiating objectives: Southeast Asian states	27
3.1.6 Negotiating objectives: Latin American states	28
3.2 US stakeholder reactions	29
3.2.1 US political leadership	29
3.2.2 Business reaction	31
3.2.3 Civil society reaction	32
3.3 Ratification challenges	32
4 TPP and TTIP	35
4.1 The old and new worlds of trade	35
4.2 The origins of TPP and TTIP	36
4.3 Key issues of the TTIP negotiations	37

4.4	The impact of TPP and TTIP on third party countries	38
4.5	Concerns about TPP and TTIP	39
4.6	TPP and TTIP – two sides of the same coin?	40
5	The impact of TPP on the European Union	41
5.1	The economic impact of TPP	41
5.2	The strategic impact of TPP	43
5.3	The impact of TPP on global governance	45
6	Conclusion	47
7	Recommendations	49
8	List of Abbreviations	50
10	Bibliography	52

## Executive summary

The Trans-Pacific Partnership (TPP) and the prospective Transatlantic Trade and Investment Partnership (TTIP) are 'mega-regional' trade deals that promise to reshape the global economy if enacted. Together these agreements encompass more than 60 % of the global economy. Negotiators from 12 nations concluded negotiations for a final TPP agreement in October 2015 and signed the agreement in New Zealand in February, 2016; by contrast, TTIP remains under negotiation.

TPP is the economic anchor of the US 'pivot' to Asia. From Washington's perspective, TPP is as much a geopolitical project to reinforce US leadership in Asia as it is driven by an economic logic of spurring new sources of trade and investment. The agreement is not designed to 'contain' China; rather, it could incentivise Chinese leaders to pursue domestic reforms to make their country eligible for TPP membership.

In many respects, the USA and its partners approached the TPP negotiations not with the traditional goal of reducing tariff barriers to the import of goods, but rather with the more ambitious objective of strengthening the overall legal framework for commerce between nations. TPP is as an instrument to establish high standards for 21st century trade, defined not simply in terms of imports and exports of goods but also of services, while upholding norms on worker rights, the digital economy, intellectual property protection, regulatory transparency, environmental safeguards, and other areas.

The reduced ambitions of the WTO's Doha Round helped produce the potential mega-regional TPP and TTIP deals. As a result of the economic and political weight of the actors involved, TTIP and TPP could have a significant impact in establishing global trade norms, a stated goal for both agreements. But the differences in both the politics and content of TTIP and TPP are substantial. While TTIP covers 29 countries, it is a negotiation between only two parties – the United States and the EU. TPP, on the other hand, is a 12-way negotiation between a diverse set of countries. The two negotiating partners in TTIP, the USA and the EU, are the biggest and most advanced trading entities in the world, while the TPP members vary significantly in their economic size and development level.

Europe as a whole needs to take a more strategic and coherent approach to Asia, beyond commerce and investment ties, and particularly to unify its approach to China. This is a compelling requirement given both China's enormous economic power and the risks its ascendancy poses to the liberal international order. Europeans have little shared sense of what their interests in Asia are. In particular, there are tensions between different EU member states and between the member states on the one hand and the EU institutions on the other. These tensions revolve around the extent to which Europeans want to promote values in Asia or simply pursue their interests, particularly commercial interests. Moreover, there are tensions between Europeans about which values they want to pursue: while some Europeans believe above all in promoting peace in Asia, others believe Europe should promote democracy, human rights and the rule of law – even if this involves a confrontation with China. In the end, the question of how Europe's own engagement with Asia across the economic-diplomatic-strategic spectrum is affected by TPP depends on how they resolve these tensions.

# 1 Introduction

The Trans-Pacific Partnership (TPP) and the prospective Transatlantic Trade and Investment Partnership (TTIP) encompass more than 60 % of the global economy, including the developed markets of North America, the European Union and Japan. Negotiators from 12 nations concluded negotiations for a final TPP agreement in October 2015 and signed the agreement in New Zealand in February, 2016; in contrast, TTIP remains under negotiation. Its progress has been slowed by the US decision to complete the trans-Pacific agreement, as well as by some ambivalence in Europe over the desirability of building a truly integrated transatlantic marketplace in light of political controversy surrounding elements of TTIP. TPP's progress towards enactment has also stalled, at least in the United States: opposition to the agreement is mounting on Capitol Hill, particularly among Democrats, while the 2016 presidential campaign features leading candidates like Donald Trump, Bernie Sanders, and Hillary Clinton who have declared either their opposition to the agreement or their determination to renegotiate parts of it. Beyond the politics around both trade deals, however, lies a conviction among trade liberalizers in both the Atlantic and Pacific theatres that the agreements could provide a positive boost to a global economy badly in need of new engines of growth.

This study examines the US strategy behind TPP and its implications for TTIP and transatlantic relations more broadly. The report seeks to answer the following guiding questions: How does TPP fit more broadly into the US rebalance to Asia? How did different TPP member states approach negotiations for the agreement? How will the current exclusion of China affect TPP and the wider global economy? How will TPP affect the TTIP negotiations and the ultimate prospect of securing a new transatlantic agreement on trade and investment? What are the implications for US-European relations of the deepening US economic focus on Asia, complementing the United States' longstanding security leadership in that region? What are the implications of TPP and TTIP for the European Union's relations with Asia, both major TPP economies like Japan, as well as non-TPP members like China?

The study takes a qualitative and comparative methodological approach, based on primary sources including interviews and trade agreement texts, as well as secondary analysis. The report argues that there would be considerable benefits to deepening the economic relationship between the United States and the European Union, and between the countries included in TPP, as sources of economic growth and alliance solidarity. However, the analysis identifies the risk that transatlantic relations could suffer if TTIP negotiations create friction between the Atlantic allies at a time when they confront challenges unprecedented since at least 1989.

The authors argue that TPP is a useful economic anchor of the US 'pivot' to Asia, righting a situation in which America has been 'overweight' militarily and 'underweight' economically in its approach to the Pacific region. They maintain that TPP is as much a geopolitical project to reinforce US leadership in Asia as it is a deal driven by an economic logic of spurring new sources of trade and investment. The Pacific trade pact is grounded in historic US economic engagement with Asia and, despite China's exclusion from the negotiations; it is not designed to 'contain' China. Instead, it was designed to incentivise that country's leaders to pursue liberalising reforms that could allow it to join TPP and, in combination with other regional trading agreements, create a platform for a wider Free Trade Area of the Asia-Pacific (FTAAP). The report assesses the complicated dynamics surrounding the TTIP negotiations, the impact of TPP on those negotiations and the potential consequences of both agreements for third parties. Finally, the study analyses the impact of TPP on European economic ties to Asia, European strategic relations with Asian powers and global governance. The report argues that Europe as a whole needs to take a more strategic and coherent approach to Asia, beyond commerce and investment ties, and in particular to unify its approach to China. This is a compelling requirement given both China's enormous economic power and the risks its ascendancy poses to the liberal international order that was built by the United States and Europe after 1945.

The study is organised as follows: Chapter 2 examines TPP in the context of wider US strategy towards Asia. Chapter 3 explores the contents of the TPP negotiations, the reactions of various US stakeholders to the agreement and the outlook for the ratification process, including possible hurdles it may encounter. Chapter 4 compares TPP and TTIP and analyses the potential implications of TPP for the TTIP negotiations. Chapter 5 assesses the impact of TPP on the EU and the global geopolitical situation, including the prospects for global governance in trade. Chapter 6 offers concluding observations. Chapter 7 contains recommendations directed to concrete actors, including the European Parliament and other European institutions, as well as Europe's core partner, the United States. An appendix summarises the provisions of the final TPP agreement.

## 2 TPP in the context of US strategy towards Asia

In 2011, the Obama Administration announced a 'pivot' or 'rebalance' to Asia. Secretary of State Hillary Clinton declared that the 21<sup>st</sup> century would be a 'Pacific century', and that the United States would focus its economic, diplomatic and military resources on that region of the world after a decade in which US leaders had been consumed by wars in Afghanistan and Iraq.<sup>1</sup> The United States' Asian allies welcomed this announcement, even as they expressed uncertainty about the US commitment to resource it and anxiety over the risk of a condominium between Washington and Beijing that would compromise the interests of other Asian nations. The United States' European and Middle Eastern allies worried that a US pivot toward Asia implicitly meant a US pivot away from transatlantic leadership and America's role as a security guarantor in the Middle East.

### 2.1 Continuity more than change

In fact, the United States is not a new actor in Asia and it may even be argued that it began pivoting towards Asia in the mid-19<sup>th</sup> century. Commodore Matthew Perry's 'black ships' opened an autarkic Japan to international trade in 1853; US merchant vessels played an active role in the China trade in subsequent decades; in 1898, the United States acquired the Philippines as a colony following the Spanish-American War; and Secretary of State John Hay propounded the Open Door notes in 1899-1900 to regulate the competition among American and European powers for access to the Chinese market.<sup>2</sup>

In the 20<sup>th</sup> century, the USA fought and defeated Japan in the 1941-1945 Pacific War, subsequently occupying the country and dictating its political and constitutional orders in ways that continue to govern Japan today. The United States mediated in the Chinese Civil War from 1946-49, ultimately forming a military alliance with Kuomintang allies in Taiwan following their defeat by the armies of the Chinese Communist Party. America was the leading power in the United Nations (UN) force that fought the Korean War from 1950-53 and has stationed tens of thousands of troops in the Republic of Korea ever since. The Cold War US alliance system incorporated not only Japan and South Korea, but also Australia, Thailand and the Philippines. In the early 1960s, the United States spent more than half of its entire worldwide foreign assistance budget supporting India's development needs.<sup>3</sup> The United States fought a major war in the late 1960s and early 1970s to prevent communist domination in Vietnam. The Nixon Administration formed an alliance with China in the early 1970s to balance Soviet power, featuring intimate military, diplomatic, and intelligence cooperation until 1989 that rivalled that offered the United States' closest allies.

After the Cold War, Presidents George H.W. Bush, William J. Clinton and George W. Bush all emphasised the United States' destiny as a Pacific nation, rejecting fears among Asian allies that the USA would retreat from its Asian commitments in the absence of a superpower competitor. The Clinton Administration revitalised the US-Japan alliance, sustained US force deployments in Japan and South Korea that many expected to be withdrawn following the demise of the Soviet Union, normalised diplomatic relations with Vietnam, offered China liberalised trade access and induction into the World Trade Organization (WTO) and joined the Asia Pacific Economic Cooperation Forum (APEC). The George

<sup>1</sup> H. Clinton, 'America's Pacific Century,' Foreign Policy, Oct. 11, 2011, <http://foreignpolicy.com/2011/10/11/americas-pacific-century/>.

<sup>2</sup> The literature on America's pre-20<sup>th</sup> century engagement of Asia is extensive. See for instance W. LaFeber, *The Clash: U.S.-Japanese Relations throughout History*, Norton, New York, 1998; W. Cohen, *America's Response to China: A History of Sino-American Relations*, Columbia, New York, 2010; and D. Wang, *The United States and China: A History from the 18<sup>th</sup> Century to the Present*, Rowman & Littlefield, New York, 2013.

<sup>3</sup> D. Markey, *No Exit from Pakistan: America's Tortured Relationship with Islamabad*, Cambridge University Press, New York, 2013, p. 85.

W. Bush Administration launched an ambitious strategic partnership with India, further strengthened the US-Japan alliance and negotiated major trade agreements with South Korea, Singapore, the Association of Southeast Asian Nations and other Asian powers. In short, the Obama Administration's emphasis on the United States' Asian orientation was not new, but was in keeping with a long tradition of US leadership as a trans-Pacific and transatlantic power.

### 2.1.1 The rise of Asia: some numbers

Despite the continuity of the Obama Administration's rebalance in an historical perspective, something was new in Asia that made the latest US 'pivot' to the region more consequential. By the second decade of the 2000s, China had emerged as the world's second-largest economy and the most likely military peer competitor to the United States. By the end of 2015, China's gross domestic product (GDP) was approximately USD 10 trillion at market rates; in purchasing power parity, China had in fact surpassed the United States as the world's largest national economy.<sup>4</sup> China was at the centre of 'Factory Asia' global supply chains that made it the prime base of global manufacturing for everything from toys to steel to iPhones, and the primary consumer of global commodities such as oil, iron ore, copper, and soybeans. Meanwhile, over two decades of annual double-digit increases in defence spending meant that China's annual military budget, estimated by the Stockholm International Peace Research Institute to be roughly USD 215 billion in 2016,<sup>5</sup> was also the world's second-largest. Its military training and acquisitions were organised around the defeat of the United States in a localised war, making it the only great power whose military doctrine centred on conflict with the world's sole superpower. China's economic slowdown from 2015 is likely to temper the pace of its GDP and military budget increases, but given its enormous base, even 5 % growth of annual economic product or military spending would represent a bigger material increase than earlier growth figures of 10 %-plus of a smaller base of GDP.<sup>6</sup>

Although it is behind China economically, India has been undergoing its own parallel rise. In 2015, it surpassed China as the fastest-growing major economy, clocking annual rates in GDP growth of 7-7.5 % as China's growth slowed into the 4-6 % range.<sup>7</sup> India will surpass China in population size in around 2025, making the south Asian giant the world's most populous nation; it will also have the world's largest, and youngest, workforce of any major economy.<sup>8</sup> The US National Intelligence Council forecasts that by 2030, India will have the world's most rapidly-expanding middle class.<sup>9</sup> The Organisation for Economic Cooperation and Development (OECD) predicts that by 2060, India could account for 18 % of global GDP.<sup>10</sup> Many forecasts anticipate that India will emerge as the world's second-largest economy, after China, in the second half of this century, with some even anticipating that India will surpass China as the

<sup>4</sup> "Data: China," *The World Bank*, <http://data.worldbank.org/country/china>.

<sup>5</sup> China's official 2016 defense budget is USD 146 billion, but international observers do not credit this figure as authoritative. S. Perlo-Freeman, "Economics Trumps Geopolitics as China Announces Lowest Defense Budget Increase in Years," Stockholm International Peace Research Institute, March 07, 2016, <http://www.sipri.org/media/expert-comments/china-defence-budget>.

<sup>6</sup> Reuters, "China's Economic Growth May Drop to 5 Percent a Year," *South China Morning Post*, March 31, 2016, <http://www.scmp.com/news/china/economy/article/1932286/chinas-economic-growth-may-drop-5-cent-year-start-next-decade>.

<sup>7</sup> E. Bellman, "India Passes China to Become Fastest-Growing Economy," *Wall Street Journal*, February 11, 2015, <http://blogs.wsj.com/indiarealtime/2015/02/11/its-official-india-has-passed-china-to-become-the-worlds-fastest-growing-economy/>. Estimates of Chinese growth vary widely due to uncertainty over Chinese statistics and the politicisation of growth figures.

<sup>8</sup> D. Twining, "How to Employ the World's Largest Workforce," *Wall Street Journal*, November 02, 2015, <http://www.wsj.com/articles/how-to-employ-the-worlds-largest-workforce-1446484959>.

<sup>9</sup> US National Intelligence Council, *Global Trends 2030: Alternative Worlds*, Office of the Director of National Intelligence, Washington D.C., 2012, <http://globaltrends2030.files.wordpress.com/2012/11/global-trends-2030-november2012.pdf>.

<sup>10</sup> Organization for Economic Cooperation and Development, *Looking to 2060: Long Term Growth Prospects for the World*, OECD, London, 2013, <http://www.oecd.org/eco/outlook/lookingto2060.htm>.

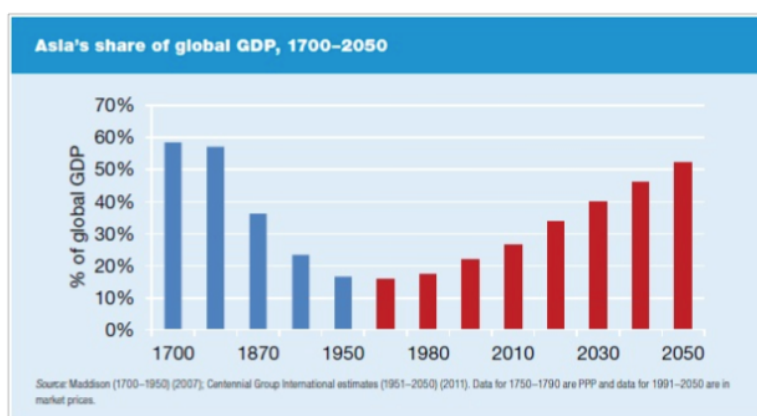
latter's population contracts while India's workforce continues to grow.<sup>11</sup> India's military and diplomatic heft is expected to increase accordingly, turning it into an all-round world power alongside China and the USA over time.

Other Asian powers will also grow, which will continue to increase the region's weight in the global balance of economic and military power. Japan remains the world's third-largest national economy and is growing again under the stimulus and liberalisation measures of 'Abenomics', the package of reforms being implemented under the leadership of Prime Minister Shinzo Abe. The Republic of Korea is an industrialised dynamo whose economic weight is frequently overlooked only because it sits between bigger neighbours, China and Japan. The Association of Southeast Asian Nations (ASEAN)<sup>12</sup> comprises 615 million people; at current rates, the bloc together would be the world's seventh-largest economy today, and contains nations like Indonesia (population 240 million) whose development trajectory is promising.

The Asian Development Bank predicts that Asia's share of global GDP will double over coming decades, producing 52 % of the world's economic output by 2050 (see Figure 1).<sup>13</sup> The United States has defined a vital strategic interest in enhancing its economic connectivity with this region as it emerges to become the international system's driver cockpit of wealth and power.

Figure 1: Asia's share of global GDP, 1700-2050

## Economic centre of gravity is shifting back to East



### Asian Century Scenario by Asian Development Bank (2011)

- **Asia's share of global GDP to double to 52% (US\$174 trillion at market exchange rates) in 2050**
- **With a per capita GDP of US\$40,800 (PPP), Asia would have incomes similar to today's Europe**
- **Asia would have roughly half of total global financial assets**

Source: Business Insider, 2012.

<sup>11</sup> H. McKay, "The world economy in 2100: Five alternative visions of the future and the development of the Alliance," Westpac Bank, [http://asiapacific.anu.edu.au/researchschool/emerging\\_asia/papers/McKay\\_final.pdf](http://asiapacific.anu.edu.au/researchschool/emerging_asia/papers/McKay_final.pdf).

<sup>12</sup> The membership of ASEAN includes Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

<sup>13</sup> Asian Development Bank, *Asia 2050: Realizing the Asian Century*, Asian Development Bank, Tokyo, 2011, <http://www.adb.org/publications/asia-2050-realizing-asian-century>.

## 2.2 The contest to write Asia's economic rules: whose model?

The Obama Administration, starting with the President himself, has framed TPP in terms of a contest to write the rules for Asia-Pacific, and, by extension, global trade in the 21<sup>st</sup> century. The President and his senior officials have made clear that, in this competition, the country that wants to write different rules, discriminating against or excluding US goods, services and technologies, is China. Sometimes they have framed TPP as the economic dimension of the US-China strategic competition; at other times, they have argued more broadly that Washington and its allies must set high standards for trade, investment and regulatory openness and transparency, so that 'someone else' does not lower them in ways that harm US economic and strategic interests. As President Obama put it to Congress in his 2016 State of the Union address, 'With TPP, China does not set the rules in that region; we do. You want to show our strength in this new century? Approve this agreement.'<sup>14</sup> These arguments are striking: the North American Free Trade Agreement (NAFTA), the last US-led trade agreement of the significance and scale of TPP, was accompanied by many arguments beyond strictly economic ones, relating to managing immigration and security threats from Mexico - but it was not posited as an element in a rivalry with another great power.

For the United States, TPP is not simply about stimulating free trade in ways that expand the prosperity of the United States and its partners (Figure 2 illustrates the expected gains from TPP in 2030); it is very much about its geo-economic competition with China in a wider contest as to how the Asia-Pacific economic order will develop over the course of coming decades. As Michael Green and Matthew Goodman argue, the Asia-Pacific is a region 'in which trade has always defined order and power [...] The gravitational pull of liberalization and wealth creation under TPP will incentivize growing numbers of states to view it as the leading economic framework for the region', reinforcing US primacy within it, but enabling China to benefit too from the enhancement of open and rules-based trade.<sup>15</sup>

Figure 2: Estimated Gains through TPP in 2030

<b>TPP: Estimated Gains in 2030</b>		
	<b>Annual real income gains</b>	
	<b>billions of 2015 dollars</b>	<b>% change from baseline</b>
<b>Total world</b>	<b>492</b>	<b>0.4</b>
<b>Total TPP-12</b>	<b>465</b>	<b>1.1</b>
United States	131	0.5
Japan	125	2.5
Malaysia	52	7.6
Vietnam	41	8.1
<b>Total non-TPP members</b>	<b>27</b>	<b>0.0</b>
European Union	48	0.2
China	-18	-0.1
Korea	-8	-0.3
Thailand	-7	-0.8
India	-5	-0.1

Source: J. Schott, Peterson Institute for International Economics, 2016.

<sup>14</sup> "Remarks of President Barack Obama – State of the Union Address As Delivered," The White House, January 13, 2016, <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address>.

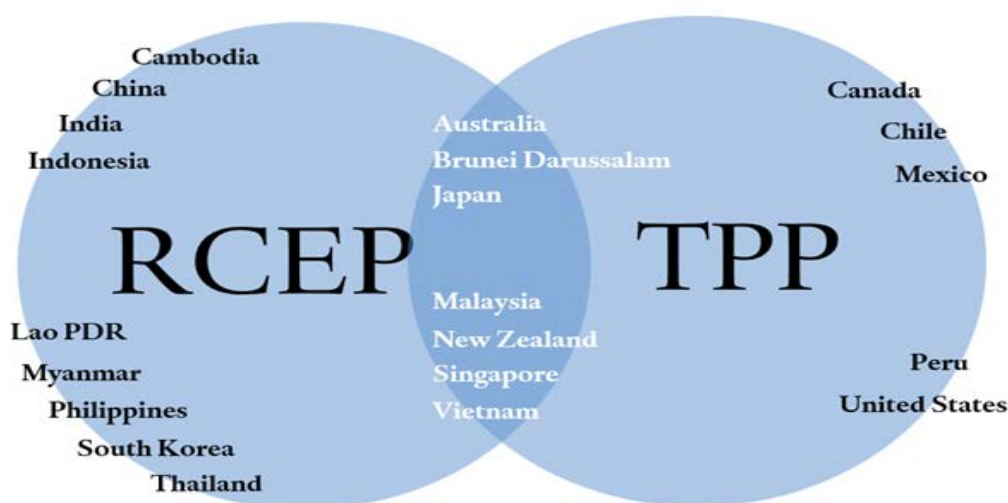
<sup>15</sup> M. Green and M. Goodman, "After TPP: The Geopolitics of Asia and the Pacific," *The Washington Quarterly* 38, no. 04 (2015): pp. 19, 26.

## 2.2.1 America's preference for open regionalism and the Chinese challenge

In its dealings with Asia since the end of the Cold War, the United States has had a preference for open regionalism. In the early 1990s, when Japan supported an effort to create an Asian Monetary Fund that excluded the United States, Washington effectively vetoed it. Instead, what emerged was the Asia Pacific Economic Cooperation forum (APEC), in which the United States is a full member and plays a dominant role. In 2005, China supported the creation of the East Asia Summit (EAS) with membership open only to China, Japan, South Korea and the ASEAN economies, excluding the United States and its regional allies like Australia and New Zealand. Washington and its allies grew alarmed, fearing the creation of a kind of 'Asian Co-Prosperty Sphere' of the kind promoted by Japan in the 1930s. Lobbying by Japan, Singapore and other nations opposed to membership in a Sinocentric club expanded the founding membership to include Australia, New Zealand and India, and in 2011 the United States also became a member of EAS.

Recently, China has pursued initiatives that exclude the United States, reinforcing its strategic objective of leading an Asian and Eurasian economic order that is less trans-Pacific in nature (therefore excluding the United States) and centred on tying China more closely to its maritime and continental neighbours. Building on agreements like the China-ASEAN Free Trade Agreement, China is promoting the Regional Comprehensive Economic Partnership (RCEP), a liberalised regional trading arrangement currently under negotiation, which includes Asian economies, but does not include the United States (see Figure 3). China has also launched the Asian Infrastructure Investment Bank (AIIB), in which it has a dominant voting share, but which includes stakeholders from across Eurasia, excluding the United States and Japan who question a new institution whose objectives mirror those of existing institutions like the Asian Development Bank. Shanghai is home to the New Development Bank (NDB), an institution akin to a mini-World Bank in which China is the leading stakeholder, alongside India, Russia, Brazil and South Africa. China is also promoting its 'One Belt, One Road' (OBOR) scheme – a network of ports, pipelines, roads and railways connecting China to Southeast Asia, South Asia, Central Asia, the Middle East and Europe – reorienting Asia's Pacific-oriented economy westwards, and placing China at the centre of new webs of connectivity.

Figure 3: Overlap of Countries in Negotiations for Regional Comprehensive Economic Partnership and Trans-Pacific Partnership



Source: A. Ayres, Forbes, 2015.

TPP was gestating before China's more recent economic initiatives like the AIIB and OBOR, so it is not a direct response to them. But it is, in many ways, a US-led institutional alternative to China's apparent strategy of organising more of Asia's economic activity around itself. TPP can also be viewed as the

preferred strategy of maritime Asia – island nations like Japan, Australia and Singapore that are dependent on the open maritime commons for their economic lifelines – versus the more Eurasian orientation of continental Asia, with its ancient overland trading links connecting the wealth of China to the markets of the wider Middle East and Europe. Many Asian countries will benefit from both the Chinese and US-led initiatives. But there is little mistaking the geo-strategic overtones of the very different visions for economic connectivity offered by the world's two leading economies.

Another way to view TPP is as a USA-Japan free trade agreement packaged as a multilateral trade deal. Despite all the focus on China's explosive rise over the past fifteen years, Japan remains the world's third-largest economy, boasting a technological base and per-capita income figures that China remains decades away from matching, if it ever does. It was Japan that launched the last round of anxiety over US 'decline' when, in the late 1980s, it looked poised to match or even potentially succeed the USA as the world's economic superpower, before, beginning in 1990, the bursting of its stock-market and real-estate bubbles produced a bout of economic retrenchment that lasted two decades.<sup>16</sup> It was against Japan more than any other economy that the United States' 'trade warriors' butted heads, given the Asian country's extraordinary success in producing manufactured exports like automobiles and its elaborate system of domestic barriers to foreign competition.<sup>17</sup>

In the words of Fred Bergsten of the Peterson Institute for International Economics, 'The TPP includes 12 countries but is largely a free trade agreement between the United States and Japan. These two countries together account for about 60 percent of its economic benefits. Both already have free trade agreements (FTA) with most of the other participants but not with each other. They are the only two individual TPP members whose ratification is required for the agreement to enter into force and hence could veto it. It is unlikely that either could have reached a bilateral FTA, in light of their domestic politics, but the regional umbrella of TPP has made a highly desirable FTA between them possible. They worked effectively together to forge the agreement among the 12.'<sup>18</sup>

In fact, Japan enjoys Economic Partnership Agreements (EPAs), which bundle free trade agreements with provisions governing investment and other elements of economic cooperation, with most TPP member states. Most significant for Japan is that the TPP agreement incorporates the United States, as well as the smaller economies of Canada and New Zealand, which did not enjoy privileged trading relationships with Japan previously. As Japan's Minister of Economy, Trade, and Industry announced at the conclusion of TPP talks, 'In particular, market access between Japan and three countries, namely the US, Canada, and New Zealand, which have not concluded Economic Partnership Agreements (EPAs) with Japan, is to be drastically improved for the first time in 20 years. Specifically, tariffs on approximately 70% of the total amount of exports of industrial products from Japan to these three countries (12 trillion yen) are to be eliminated at the time of the effectuation of the TPP Agreement, and all tariffs are to be eliminated eventually.'<sup>19</sup> The TPP's status as a vehicle for a Japan-US FTA has significant implications for the EU's own negotiations towards a free trade agreement with Japan, although both Japanese and EU trade negotiators warn that TPP will not be a template for a Japan-EU FTA.<sup>20</sup>

<sup>16</sup> E. Vogel, *Japan as Number One: Lessons for America*, Harvard University Press, Boston, 1979.

<sup>17</sup> Steve Dryden, *The Trade Warriors: USTR and the Crusade for American Trade*, Oxford University Press, New York, 1995.

<sup>18</sup> C. F. Bergsten, "The Trans-Pacific Partnership and Japan," Peterson Institute for International Economics, November 16, 2015, <http://www.iie.com/publications/opeds/oped.cfm?ResearchID=2871>.

<sup>19</sup> "Statement by Minister Miyazawa, Minister of Economy, Trade, and Industry: Substantial Agreement on the Trans-Pacific Partnership Agreement," Ministry of Economy, Trade, and Industry, October 6, 2015, [http://www.meti.go.jp/english/speeches/20151006\\_01.html](http://www.meti.go.jp/english/speeches/20151006_01.html).

<sup>20</sup> Deputy Director-General Mauro Petriccione, DG Trade, European Commission, and Koji Haneda, Ambassador for International Economic Affairs, Japanese Ministry of Foreign Affairs, speaking at the German Marshall Fund Japan Trilateral Forum-Brussels, Mar. 2, 2016.

## 2.2.2 Balancing economic dependency: Asian hedging strategies & the role of the United States

In addition to the economic significance of such an FTA between the world's 1<sup>st</sup>- and 3<sup>rd</sup>-largest economies, the strategic implications are profound. Washington and Tokyo have long enjoyed an intimate security alliance at the same time as they have competed vigorously against each other for economic advantage; TPP helps alleviate historically deep trade frictions by creating the framework for an economic alliance to match the military one. The charge that TPP is designed to 'contain' China is partly a reflection of this geopolitical dimension of US and Japanese leadership within the Trans-Pacific Partnership.

Indeed, Japan's calculation vis-à-vis the United States is mirrored by a number of Asian TPP partners. The Asian members of TPP broadly view the agreement as one that will help catalyse economic growth at home, while at the same time diversifying trade and investment ties with the United States and each other. In doing so, Asian TPP members are hedging against the risks of excessive economic dependency on the Chinese market at a time when political and economic risk is rising there on account of a lack of transparency and rule of law, a playing field that is tilted towards Chinese firms and state-owned enterprises at the expense of foreign corporations, surging nationalism, slowing economic growth, and spiking labour costs. At the same time, the broader geopolitical significance of TPP means that Asian signatories are also hedging against the risks to their security and foreign policy autonomy posed by China's growing economic power, and the diplomatic leverage that gives China against lesser neighbours. Tightening economic integration with the United States is one way to diversify not only economic ties but also security relationships, drawing the USA deeper into regional affairs as a way to check Chinese influence. As US Trade Representative Michael Froman puts it, 'Given recent developments in Asia and Europe - tensions over the East China and South China seas, the crisis in Ukraine - the strategic implications of US trade policy have rarely been clearer. For many of the countries that would be party to the TPP, the economic benefits of the agreement are further sweetened by expectations that the United States will become more deeply embedded in the region.'<sup>21</sup>

China's Asian neighbours face a conundrum – that the economic magnetism of their giant neighbour risks pulling them ever more tightly into its strategic sphere of influence. TPP members, Japan and Australia, are US treaty allies; Singapore is a quasi-ally, with an alliance-like military relationship with Washington, even if it does not officially go by that name; while countries like Malaysia and Vietnam are security partners of the United States that cooperate variously in intelligence-sharing, defence exchanges and military supply and training. China is the top trading partner to all of these countries, given its proximity and sheer scale; however, they look to Washington for security partnerships. In addition to the economic boost it promises to their domestic economies, TPP also offers the chance to align more closely with the United States – not only on trade and investment ties, but also on issues like the freedom of Asia's maritime commons, where the openness of the region's trade highways is threatened by Chinese military pressure, for instance in the South China Sea.

The United States, in turn, secures through TPP a heightened economic leadership role in Asia, which is consistent with its security ties and commitments across the region. Just as Washington wants to work with allies and partners to uphold a regional security order that is peaceful and pluralistic, it also wants to work with TPP counterparts to uphold a regional economic order that is rules-based and open to outside powers (like the United States and TPP signatory, Canada), rather than one which risks becoming ever more centred around China's economic dominance. In short, Asian powers are hedging against a

<sup>21</sup> M. Froman, "The Strategic Logic of Trade," Foreign Affairs, November 13, 2014, <https://www.foreignaffairs.com/articles/americas/strategic-logic-trade>.

Sinocentric economic and security order by partnering with the United States in TPP, even as the United States pursues a similar strategy in reverse to ensure its continued economic and political access to the world's emerging centre of wealth and power in Asia. So important is TPP as a broader vehicle for American leadership in Asia that US Secretary of Defence Ashton Carter has said that 'passing TPP is as important to me as another aircraft carrier' for projecting US influence across the Pacific and reassuring its allies.<sup>22</sup>

### 2.2.3 China and TPP: geo-economic competition with America?

The debate within China over TPP has evolved considerably since the Obama Administration initially invoked the hoped-for trade agreement as a centrepiece of its 'rebalance' to Asia. Because the 'pivot' was framed as a way of hedging against the risk that China would come to dominate its region, placing TPP at the centre of the strategy suggested that the agreement was designed to side-line China or was to be used as a tool to offset its growing power. Indeed, state-run Chinese media and Chinese strategists with close ties to the government lambasted the deal as designed to 'contain' China economically, just as the expanding US military presence in Asia under Obama was designed to 'contain' it in security terms.

Both President Obama and US Trade Representative Michael Froman reinforced these perceptions by attempting to rally US congressional support for TPP on the basis that the agreement was essential to preserve American regional leadership in the face of a Chinese challenge, and that if the United States and its allies did not write the economic rules for 21<sup>st</sup> century Asia, China would – in ways that would discriminate against the interests and values of the United States and its regional partners.<sup>23</sup> The fact that TPP incorporated several of Washington's treaty allies, including Japan, Australia and New Zealand, as well as important military partners like Malaysia and Singapore and emerging ones like Vietnam – all of whose leaders had warned against the risks of Chinese regional hegemony – reinforced the perception that TPP was as much a vehicle for geopolitical competition, as it was an economic instrument to promote open markets and investment.

The broad Chinese assessment that TPP was the leading edge of a US geopolitical project was reinforced by Beijing's own use of economic instruments as tools of state power and influence. In the 1990s and 2000s, China led the formation of regional groupings like ASEAN Plus Three (APT, consisting of the ten members of the Association of Southeast Asian Nations plus China, Japan and South Korea) and the East Asia Summit (EAS), both of which excluded the United States. Leaders in Beijing used economic arrangements like the China-ASEAN Free Trade Agreement (which in fact enacted only a shallow form of economic liberalisation that continued to allow member states to protect important sectors of their economy from foreign competition) as political projects to promote Chinese influence with its neighbours and to reassure them over their security concerns stemming from China's growing military power.

More recently, President Xi Jinping has announced grand plans for a series of 'New Silk Roads' under the 'One Belt, One Road' (OBOR) scheme of building infrastructure links from China across Central Asia and the Middle East to Europe. While OBOR has a certain economic logic, it is also an innately political project of placing China at the centre of a series of overland and maritime routes in ways that elevate China's geopolitical leadership in Eurasia. Similarly, the Chinese-led Asian Infrastructure Investment Bank (AIIB), established in 2015, has an economic logic of channelling the capital of China and other members into the regional development of ports, roads, rails and pipelines. But its political significance was underlined

<sup>22</sup> A. Carter, "Remarks on the Next Phase of the U.S. Rebalance to the Asia-Pacific", speech, Arizona State University, Tempe, April 06, 2015, <http://www.defense.gov/News/Speeches/Speech-View/Article/606660/remarks-on-the-next-phase-of-the-us-rebalance-to-the-asia-pacific-mccain-instit>.

<sup>23</sup> Froman, "The Strategic Logic of Trade."

by the intense transatlantic disputes it generated, with the Obama Administration lobbying European member states against joining the institution on political grounds, even as America's European allies – led by Great Britain but also including Germany, France, Italy, and other EU member states, ultimately chose to align with Beijing over Washington, producing a clear public diplomacy win for China and an embarrassing loss for the United States.<sup>24</sup>

### 2.2.4 The ultimate prize for TPP: Chinese inclusion

In short, China's perception of TPP as part of a US-led strategy to weaken China geopolitically is in part a function of its use of economic instruments to enhance its own geopolitical influence at US expense. However, as China's economic growth slowed and imbalances in the Chinese economy became more apparent in the 2014-2015 period, the discourse within China over TPP also changed. Beijing had already begun to take TPP far more seriously when Japan joined the negotiations in 2013.<sup>25</sup>

Chinese officials and thinkers close to the government began publicly discussing the possibility of whether China itself could join TPP. This could occur in several ways: China could finalise negotiations with Asian trading partners over the Regional Comprehensive Economic Partnership (RCEP) and then ultimately merge this pan-Asian arrangement with the cross-Pacific TPP, some of whose members were also part of RCEP. In speeches, President Xi has advocated for a Free Trade Area of the Asia-Pacific (FTAAP) – as have successive US presidents – so, in this scenario, both RCEP and TPP, as well as other arrangements like the China-ASEAN FTA and APEC, would all be building blocks towards a more comprehensive Asia-Pacific economic trade and investment community. That said, RCEP will have much lower standards for liberalization than will TPP if both are enacted, meaning they could not simply be seamlessly integrated. It would be more straightforward for China to join TPP directly, though that would require substantial domestic reforms to render it eligible. Compared the TPP, RCEP is much more limited in scope. TPP was designed to go beyond regular WTO-style commitments, which is why it (and TTIP) are often referred to as a "21st century trade agreements". RCEP (because of its membership) has a slightly more limited conception of what an FTA should be; its tariff reduction scope is largely limited to harmonization of existing FTAs in the region, unlike TPP's ambitions with respect to the digital economy, innovation, and services. There are expected to be far more exceptions for sensitive products, to produce less internal economic reform from its signatories, and to have much shallower standards on regulatory and other issues.<sup>26</sup> As the German Marshall Fund's Amy Studdart argues, "The ASEAN framework [for RCEP] is very vague and broad: a symptom of the fact that it has been designed to be an inclusive compromise-based agreement. The TPP framework is specific in its goals, which made it far less inclusive, but created the scope for a great deal more ambition than would otherwise have been possible."<sup>27</sup> A key test of TPP's capacity to incorporate China, assuming Beijing makes the reforms necessary to qualify for membership, will be the openness of TPP economies to new members. As of early 2016, South Korea, Indonesia, the Philippines and Taiwan had all expressed interest in joining a second wave of TPP enlargement. Incorporating a reformed Chinese economy alongside these and other Asian nations that meet the economic criteria for TPP membership would send a useful signal of inclusivity in ways that

<sup>24</sup> George Parker, Anne-Sylvaine Chassany, and Geoff Dyer, "Europeans Defy US to Join China-led Development Bank," Financial Times, March 16, 2015, <http://www.ft.com/intl/cms/s/0/0655b342-cc29-11e4-beca-00144feab7de.html#axzz472pkludh>. For a useful European perspective on AIIB, see European Political Strategy Center, *The Asian Infrastructure Investment Bank: A New Multilateral Financial Institution or a Vehicle for China's Geostrategic Goals*, European Commission, Brussels, April 24, 2015, [http://ec.europa.eu/epsc/publications/notes/sn1\\_en.htm](http://ec.europa.eu/epsc/publications/notes/sn1_en.htm).

<sup>25</sup> K. Yao, "China to Study Possibility of Joining U.S.-led Trade Talks," Reuters, May 30, 2013, <http://www.reuters.com/article/us-trade-asiapacific-china-idUSBRE94T0X420130530>.

<sup>26</sup> For an authoritative consideration of the prospects for TPP/RCEP harmonisation and the creation of an APEC trade framework, see J. Schott, "Asia-Pacific Economic Integration: Projecting the Path Forward," Peterson Institute for International Economics, April 29, 2014, <http://www.iie.com/publications/papers/schott201404APEC-FTAPP.pdf>.

<sup>27</sup> Amy Studdart, email exchange with author, April 20, 2016.

would undercut those Chinese who view TPP as part of a US containment strategy. It would also enhance TPP's economic impacts, which would become even more substantial was the agreement to incorporate the world's biggest trading economy in China.

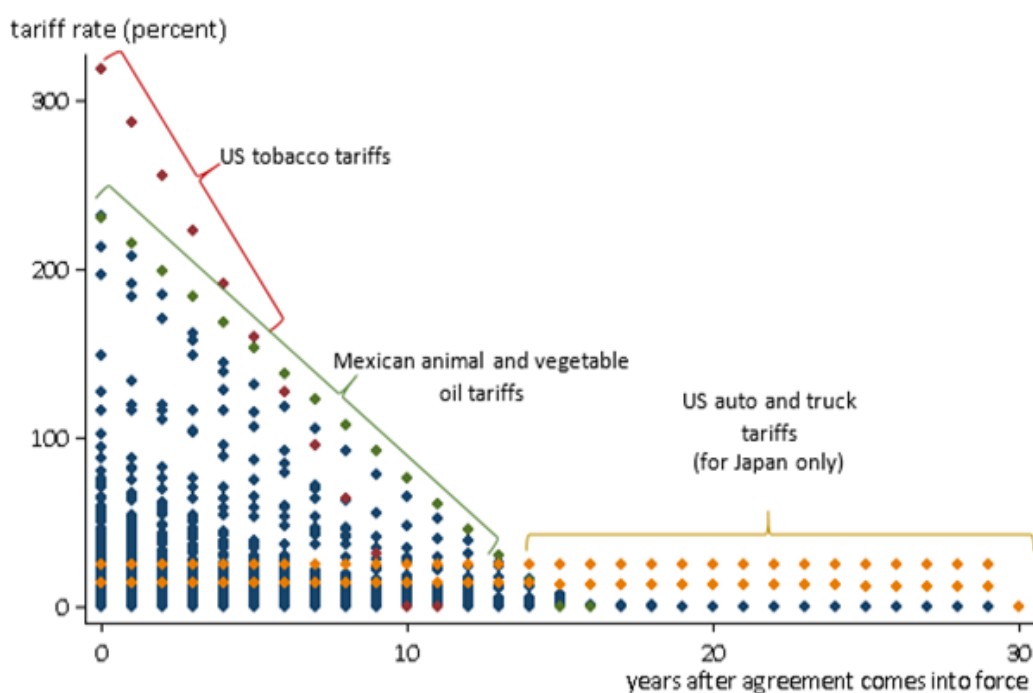
In the late 1990s, Chinese leaders like Premier Zhu Rongzi used the prospect of Chinese membership in the World Trade Organization (WTO) to push through controversial economic reforms at home that ultimately catalysed Chinese economic growth. Similarly, over the coming period, the Xi Jinping regime could use the allure of TPP membership to overcome domestic sectoral and political opposition to necessary economic reforms that would make the Chinese economy more transparent, market-oriented and rule-bound. Beijing increasingly may identify an interest in joining TPP: although TPP would not discriminate against Chinese exports, which would remain subject to most-favoured-nation-based tariffs, it would create relative advantages for TPP members that benefit from duty reduction or elimination. Chinese leaders could also use TPP as an external spur to implement urgent economic reforms at home as China confronts the limits to debt-fuelled growth and state-led development. Jin Liqun, the head of the Chinese-led Asian Infrastructure Investment Bank, declared his support for Chinese membership of TPP in late 2015 as a means to spur greater reform and internationalisation of the Chinese economy.<sup>28</sup> From a United States perspective, TPP ultimately may be most valuable strategically as a way to induce China to reform and open up in ways that further integrate the Asia-Pacific economy, rather than dividing it.

<sup>28</sup> J. Liqun, "Building Asia's New Bank", address, The Brookings Institution, Washington, D.C., October 21, 2015.

### 3 The content of the TPP negotiations, stakeholder reactions and the ratification process

US trade negotiators, led by US Trade Representative Michael Froman, have systematically argued that TPP is not simply another trade agreement.<sup>29</sup> US officials and observers frequently compare TPP to the North American Free Trade Agreement (NAFTA). In scale, TPP, if enacted, will be the most consequential trade agreement Washington will have concluded since NAFTA (TPP includes all NAFTA signatories so will actually supersede it in many areas). Figure 4 illustrates the gradual reduction of tariff rates under TPP. But, as with NAFTA, TPP was designed not simply to lubricate flows of goods across national boundaries, but with an express political purpose of accomplishing foreign and domestic policy objectives. For NAFTA, those priorities included stemming illegal immigration from Mexico by using trade to create growth and economic opportunity in that country that would encourage it to retain workers rather than export them to America.

Figure 4: TPP member tariff rates from the year TPP enters into force year 30



Source: S. Oliver, Peterson Institute of International Economics, 2015.

Similarly, TPP has wider foreign and economic policy objectives. In addition to its geopolitical significance as the centrepiece of the US 'pivot' to Asia described in the previous chapter, American officials view TPP as an instrument to establish high standards for 21<sup>st</sup> century trade; defined not simply in terms of imports and exports of goods, but also of services, as well as with reference to the upholding of norms on workers' rights, the digital economy, intellectual property protections, regulatory transparency and other elements appropriate to the technology- and services-driven US economy. In many respects, the United States approached the TPP negotiations not with the traditional goal of reducing tariff barriers to the import of US goods, but rather with the more ambitious objective of strengthening the overall legal

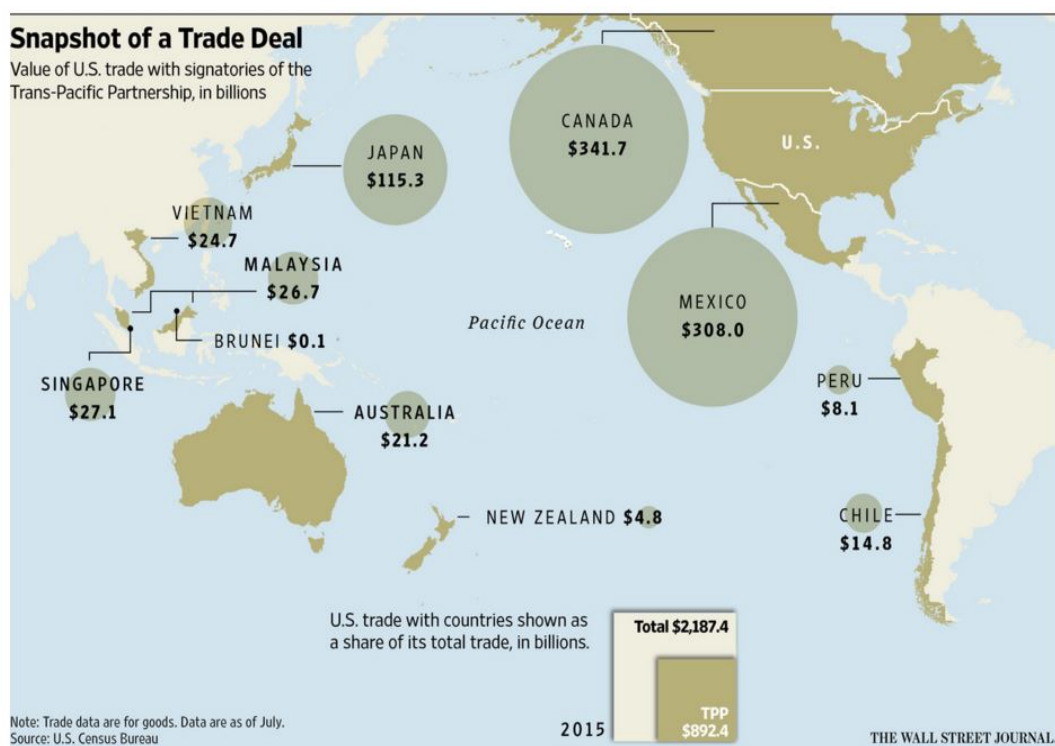
<sup>29</sup> See for instance Office of the United States Trade Representative, "Transcript of the Trans-Pacific Partnership Atlanta Ministerial Closing Press Conference," October 2015, <https://ustr.gov/about-us/policy-offices/press-office/speeches/transcripts/2015/october/transcript-trans-pacific>.

framework for commerce between nations. These regulatory standards apply not only to the treatment of exports and imports, but also to a range of 'behind-the-border' domains; from enabling workers to form unions, to enacting environmental protections, to requiring state-owned enterprises to compete fairly according to market principles.

### 3.1 TPP negotiating objectives and final agreement outcomes for key countries

The United States was by far the largest economy engaged in the TPP talks and was ultimately the driving force behind the negotiations leading up to the final negotiated text. However, this report also briefly surveys the negotiating objectives of Japan, Canada, Australia and New Zealand, southeast Asian states, and the Latin American members of TPP. To a considerable extent, the final TPP agreement reflects US negotiating priorities, amended in specific areas (like pharmaceuticals) where Washington encountered resistance to its maximalist aims from member states with particularly sensitive interests in key sectors. The United States also had the most expansive and ambitious agenda for the content of the TPP agreement (Figure 5 shows the value of US trade with signatories of TPP); other member states had particular sectoral concerns (e.g. dairy for Australia and New Zealand, rice and beef for Japan) that were less comprehensive in scope. Still other member states, such as Vietnam and Malaysia, were less central to the technical negotiations, but sought inclusion in TPP to advance broad economic reforms at home and to symbolise closer associations with the United States and its regional allies for the purposes of Asian geopolitics, with an eye on counterbalancing Chinese influence through diversification of economic partnership opportunities.

Figure 5: Value of US trade with signatories of TPP



Source: W. Mauldin, Wall Street Journal, 05 October 2015.

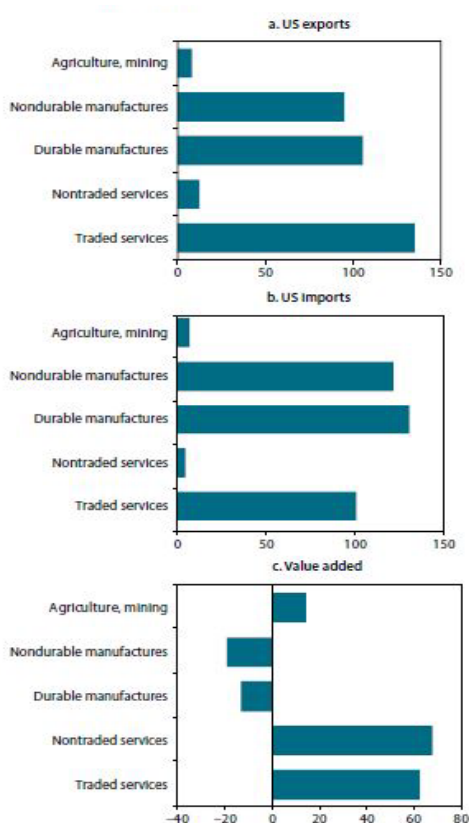
### 3.1.1 United States

The United States achieved many of its negotiating objectives with the final TPP agreement, including the elimination of tariffs from most products traded among TPP partners, investment and regulatory liberalisation, and social protections for workers and the environment. Specific sectoral issues where the United States did not fully achieve its objectives, including with respect to pharmaceuticals and automobiles, are discussed more specifically in a later section of the report.<sup>30</sup> Figure 6 shows the expected increase in US trade output by 2030.

#### Trade in goods

Washington sought the elimination of tariffs and the provision of commercially-meaningful market access for US products exported to TPP countries, as well as the reduction of longstanding non-tariff barriers, including import licensing requirements and other restrictions. The final agreement eliminates most tariffs on industrial goods immediately, although tariffs on some products – including in the automobile and agricultural sectors – are to be eliminated gradually over a longer time frame, in some cases extending several decades, meaning that restraints on trade in these sectors will remain in force subject to more ambitious liberalisation through future trade agreements.

Figure 6: US trade output under TTP: Changes relative to the baseline in 2030



Source: Petri and Plummer, Peterson Institute for International Economics, 2016.

<sup>30</sup> This section is drawn from Office of the United States Trade Representative, "TPP Full Text," <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>; Office of the United States Trade Representative, "Trans-Pacific Partnership: Summary of U.S. Objectives," , <https://ustr.gov/tpp/Summary-of-US-objectives>; and Office of the United States Trade Representative. "Summary of the Trans-Pacific Partnership Agreement." October 2015. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>.

## **Trade in Services**

US objectives included liberalising access for service companies, so they receive better or equal treatment to service suppliers from TPP countries' other FTA partners and face a more level playing field in TPP markets, including in key sectors like financial services and insurance. The final TPP text endorses free trade in services on a 'negative-list' basis, meaning that members' markets are fully open to services suppliers from TPP countries, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes attached to the agreement.

## **Investment**

US negotiating objectives included liberalised access for investment in TPP markets; provisions that address measures that require TPP investors to favour another country's domestic technology in order to benefit state-owned enterprises (SOEs); and procedures for arbitration that provide basic rule of law protections for US investors operating in foreign markets similar to those the United States already provides to foreign investors operating in the USA. The final TPP agreement set out rules requiring non-discriminatory investment policies and protections that assure basic rule of law protections. Investment among TPP parties will occur on a 'negative-list' basis, meaning that their markets are fully open to foreign investors, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes.

## **Textiles**

US objectives included elimination of tariffs on textile and apparel exports to TPP countries, and a textile-specific safeguard mechanism that allows the United States and other TPP countries to re-impose tariffs on certain goods if a surge in imports causes, or threatens to cause, serious damage to domestic producers. The final agreement eliminates tariffs on textiles and apparel, most immediately, although tariffs on some sensitive products are to be eliminated over longer timeframes. The final text also includes a textile-specific safeguard to respond to the threat or infliction of serious damage to domestic industry in the event of a sudden surge in imports.

## **Labour**

US negotiating objectives included requiring all TPP members to adhere to fundamental labour rights as recognised by the International Labour Organization (ILO), as well as acceptable conditions of work; rules ensuring that TPP countries do not waive or derogate from labour laws in a manner that affects trade or investment; and the discouragement of trade in goods produced by forced labour. In the final agreement, TPP parties agree to adopt and maintain in their laws and practices the fundamental labour rights as recognized in the ILO 1998 Declaration, including freedom of association, the right to collective bargaining, elimination of forced labour, abolition of child labour, and elimination of discrimination in employment. They also agree to have laws governing minimum wages, hours of work, and occupational safety and health. In addition to commitments to eliminate forced labour in their own countries, the labour chapter includes commitments to discourage importation of goods that are produced by forced labour or child labour, or that contain inputs produced by forced labour, regardless of whether the source country is a TPP party.

## **Environment**

US negotiating objectives included strong and enforceable environment obligations, subject to the same dispute settlement mechanism as other obligations in TPP; commitments to effectively enforce domestic environmental laws, including laws that implement multilateral environmental agreements; and provisions to address wildlife trafficking, illegal logging, and illegal fishing practices. In the final text, TPP members agree to effectively enforce their environmental laws and not to weaken environmental laws in order to encourage trade or investment; to uphold their obligations under the Convention on

International Trade in Endangered Species of Wild Fauna and Flora (CITES), and to take measures to combat and cooperate to prevent illegal trade in wild fauna and flora; to promote sustainable forest management and protect and conserve at-risk wild fauna and flora; to protect the marine environment from ship pollution; and to sustainably manage fisheries, combat illegal fishing, and prohibit fisheries subsidies that produce overfishing while refraining from introducing new subsidies that contribute to overfishing.

### **Electronic commerce and telecommunications**

US negotiating objectives included commitments not to impose customs duties on digital products (e.g. software, music, video, e-books); non-discriminatory treatment of digital products transmitted electronically; requirements that support a single, global Internet, including ensuring cross-border data flows, consistent with governments' legitimate interests in regulating for purposes of privacy protection; rules against localisation requirements that force businesses to place computer infrastructure in each market in which they seek to operate; commitments to provide reasonable network access for telecommunications suppliers through interconnection and access to physical facilities; and provisions promoting choice of technology and competitive alternatives to address the high cost of international mobile roaming. In the final agreement, TPP Parties commit to ensuring free flow of the global data, subject to legitimate public policy objectives such as personal information protection. They agree not to require that TPP companies build data centres to store data as a condition for operating in a TPP market, and, in addition, that source code of software is not required to be transferred or accessed. TPP prohibits the imposition of customs duties on electronic transmissions, and prevents member states from favouring national producers or suppliers of such products. The final agreement contains provisions encouraging TPP parties to promote paperless trading between businesses and the government, such as electronic customs forms, to facilitate electronic commerce, and to cooperate on policies regarding personal information protection, online consumer protection, cybersecurity threats and cybersecurity capacity. TPP members agree to promote competition in international mobile roaming services, facilitate the use of alternatives to roaming, include mobile suppliers in pro-competitive network access rules, and ensure regulatory transparency to prevent discrimination.

### **Competition policy and state-owned enterprises (SOEs)**

US negotiating objectives included basic rules for procedural fairness on competition law enforcement; commitments ensuring SOEs act in accordance with commercial considerations and compete fairly, without undue advantages from the governments that own them, while allowing governments to provide support to SOEs that provide public services domestically; and rules that will provide transparency with respect to the nature of government control over and support for SOEs. In the final agreement, TPP members commit to maintain legal regimes that prohibit anticompetitive business conduct, as well as fraudulent and deceptive commercial activities that harm consumers; to adopt, maintain, or expand national competition laws that proscribe anticompetitive business conduct; and to establish or maintain authorities responsible for the enforcement of national competition laws, including laws or regulations proscribing fraudulent and deceptive commercial activities that harm consumers. The competition policy chapter of TPP is not subject to the agreement's dispute settlement provisions. With respect to state-owned enterprises, these are to be governed on the basis of commercial considerations. SOEs or designated monopolies should not discriminate against the enterprises, goods, and services of other TPP member states. Administrative bodies regulating both SOEs and private companies are to do so in an impartial manner. TPP parties agree to not cause adverse effects to the interests of other TPP members by providing non-commercial assistance to SOEs, or injury to another party's domestic industry by providing non-commercial assistance to an SOE that produces and sells goods in that other TPP member's territory.

### **Small and medium-sized enterprises (SMEs)**

US negotiating objectives included commitments to provide access to information on utilising FTAs and establishment of a regular review of how TPP is working for small and medium-sized enterprises (SMEs). The final agreement includes commitments by TPP parties to create user-friendly websites targeted at small and medium-sized enterprise users to provide easily accessible information on the TPP and ways small firms can take advantage of it, and creation of a Small- and Medium-Sized Enterprises Committee that will meet regularly to review how well the TPP is serving SMEs, consider ways to further enhance its benefits, and oversee cooperation or capacity building activities to support them.

### **Intellectual property rights**

US negotiating objectives included strong protections for patents, trademarks, copyrights and trade secrets, including safeguards against cyber theft of trade secrets; commitments that obligate countries to seek to achieve balance in their copyright systems; pharmaceutical intellectual property (IP) provisions that promote innovation and the development of new, lifesaving medicines, create opportunities for robust generic drug competition and ensure affordable access to medicines, taking into account levels of development among the TPP countries and their existing laws and international commitments; new rules that promote transparency and due process with respect to trademarks and geographical indications; strong and fair enforcement rules to protect against trademark counterfeiting and copyright piracy; and internet service provider 'safe harbour' provisions, as well as strong and balanced provisions regarding technological protection measures to foster new business models and legitimate commerce in the digital environment. The final agreement establishes standards for patents and trademarks, as well as extensive protection for copyrights. The parties agreed to provide strong enforcement systems including criminal procedures and penalties for commercial-scale trademark counterfeiting and copyright or related rights piracy. This chapter of the final accord contains pharmaceutical-related provisions that facilitate both the development of innovative, life-saving medicines and the availability of generic medicines. The compromise on pharmaceutical 'biologics' fell substantially short of US negotiating objectives and constituted one of the most important concessions US trade negotiators made to secure the final TPP agreement, at the risk of complicating the US Congress' approval of the accord.

### **Technical barriers to trade and sanitary and phytosanitary measures**

US negotiating objectives included securing commitments to enhance transparency, reduce unnecessary testing and certification costs and promote greater openness in standards development; commitments aimed at adopting common approaches to regulatory matters related to trade in products in key sectors; new and enforceable rules to ensure that science-based health and safety measures are developed and implemented in a transparent, predictable and non-discriminatory manner, while at the same time preserving the ability of US and other TPP regulatory agencies to do what they deem necessary to protect food safety and plant and animal health. The TPP builds on WTO rules for identifying and managing risks in a manner that is no more trade restrictive than necessary. TPP parties agree to allow the public to comment on proposed sanitary and phytosanitary (SPS) measures to inform their decision-making, and to ensure traders understand the rules they will need to follow. They agree that import programmes are based on the risks associated with importations, and that import checks are carried out without undue delay. TPP also authorises emergency measures necessary for the protection of human, animal, or plant life or health to be taken by member states if they notify all others.

### **Transparency, anti-corruption and regulatory coherence**

US negotiating objectives included securing commitments to promote greater transparency, participation and accountability in the development of regulations and other government decisions; for the first time in a US trade agreement, a chapter on regulatory coherence, including commitments on good regulatory practices; and commitments discouraging corruption and establishing codes of conduct

to promote high ethical standards among public officials. The final accord commits TPP parties to ensure that their laws, regulations, and administrative rulings of general application with respect to any matter covered by the TPP are publicly available and that, to the extent possible, regulations that are likely to affect trade or investment between the Parties are subject to notice and comment. TPP members must afford due process rights for TPP stakeholders in connection with administrative proceedings, including prompt review through impartial judicial or administrative tribunals or procedures. They also agree to adopt or maintain laws criminalising offering to, or solicitation of, undue advantages by a public official, as well as other acts of corruption affecting international trade or investment. Parties also commit to effectively enforce their anticorruption laws and regulations, and to adopt or maintain codes or standards of conduct for their public officials, as well as measures to identify and manage conflicts of interest, to increase training of public officials, to take steps to discourage gifts, to facilitate reporting of acts of corruption, and to provide for disciplinary or other measures for public officials engaging in acts of corruption.

### **Customs, trade facilitation, and rules of origin**

US negotiating objectives included securing commitments to ensure the quick release of goods through customs, expedited procedures for express shipments, advance rulings, and transparent and predictable customs regulations; strong customs cooperation commitments, in order to ensure that TPP countries work together to prevent smuggling, illegal transshipment and duty evasion, and to guarantee compliance with trade laws and regulations; strong and common rules of origin to ensure that the benefits of TPP go to TPP countries, and also that TPP promotes the development of supply chains in the region inclusive of TPP members. TPP establishes transparent rules for member states, including publishing their customs laws and regulations and providing for release of goods without unnecessary delay. Members agree to advance rulings on customs valuation and other matters that will help businesses trade with predictability; to disciplines on customs penalties to ensure impartiality and transparency; to provide expedited customs procedures for express shipments; and to counter smuggling and duty evasion by sharing information to uphold their respective customs laws.

### **Government procurement**

US negotiating objectives included creation of fair, transparent, predictable and non-discriminatory rules to govern government procurement in TPP countries, and commitments to liberalise TPP countries' government procurement markets. In the final agreement, TPP parties commit to core disciplines of national treatment and non-discrimination; to publish relevant information in a timely manner, to allow sufficient time for suppliers to obtain tender documentation, to treat tenders fairly and impartially, and to maintain confidentiality of tenders. In addition, members agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. Each Party agrees to a positive list of entities and activities that are covered by the chapter, which are listed in annexes.

### **Development and trade capacity building**

US negotiating objectives included an agreement on cooperative development activities to promote broad-based economic growth and sustainable development, including public-private partnerships, science and technology cooperation and other joint development activities; mechanisms for collaboration and facilitation of capacity-building activities by both TPP government and non-government representatives, as well as the private sector, in order to help TPP workers and businesses participate in global trade and take advantage of the agreement. The final agreement establishes a Committee on Cooperation and Capacity Building to identify and review areas for potential cooperative and capacity building efforts. A TPP Development Committee will meet regularly to promote cooperation

in three areas: (1) broad-based economic growth, including sustainable development, poverty reduction, and promotion of small businesses; (2) women and economic growth, including helping women build capacity and skill, enhancing women's access to markets, obtaining technology and financing, establishing women's leadership networks, and identifying best practices in workplace flexibility; and (3) education, science and technology, research, and innovation.

### Dispute settlement

US negotiating objectives included establishment of a fair and transparent dispute settlement mechanism that applies across the agreement, and procedures to allow the settlement of disputes on matters arising under TPP in a timely and effective manner. The final agreement creates a dispute settlement mechanism to resolve conflicts that cannot be satisfied by bilateral negotiations among member states. Should consultations fail to resolve an issue, parties may request establishment of a panel, which would be established within 60 days after the date of receipt of a request for consultations or 30 days after the date of receipt of a request related to perishable goods. Panels will be composed of three international trade and subject matter experts independent of the disputing parties, with panellists subject to a code of conduct to ensure the integrity of the dispute settlement mechanism. They will present an initial report to the disputing parties within 150 days after the last panellist is appointed or 120 days in cases of urgency, such as cases related to perishable goods. The initial report will be confidential, to enable parties to offer comments. The final report must be presented no later than 30 days after the presentation of the initial report and must be made public within 15 days, subject to the protection of any confidential information in the report. To maximize compliance, the dispute settlement chapter allows for the use of trade retaliation (e.g., suspension of benefits), if a party found not to have complied with its obligations fails to bring itself into compliance with its obligations. Before use of trade retaliation, a party found in violation can negotiate or arbitrate a reasonable period of time in which to remedy the breach.

### US-Japan motor vehicle trade and non-tariff measures

U.S. negotiating objectives included securing enforceable commitments related to the automotive sector that address a broad range of non-tariff measures, establishment of an accelerated dispute settlement procedure that would apply to the automotive sector, which includes a mechanism to 'snap back' tariffs as a remedy, as well as a special motor vehicle safeguard; meaningful outcomes that address cross-cutting and sectoral non-tariff measures. Appendix D of the final TPP text contains a bilateral United States-Japan agreement addressing liberalisation of non-tariff barriers to bilateral trade in cars and light trucks.<sup>31</sup> As discussed further below, US automobile manufacturers were dissatisfied with this settlement, making it a key obstacle to US Congressional approval of the TPP agreement.

### 3.1.2 Negotiating objectives: Japan

Japan's negotiating objectives in TPP were diverse.<sup>32</sup> They included the following: creating an economic anchor to its critical relationship with the United States alongside its military alliance; demonstrate to

<sup>31</sup> Office of the United States Trade Representative, "U.S.-Japan Motor Vehicle Trade Non-Tariff Measures," <https://ustr.gov/sites/default/files/TPP-Summary-US-Japan-Motor-Vehicle-Trade-Non-Tariff-Measures.pdf>.

<sup>32</sup> R. A. Rogowsky and G. Horlick, *TPP and the Political Economy of U.S.-Japan Relations*, Woodrow Wilson Center for International Studies, Washington, D.C., 2016, [https://www.wilsoncenter.org/sites/default/files/TPP%20and%20the%20Political%20Economy%20of%20US-Japan%20Trade%20Negotiations\\_1.pdf](https://www.wilsoncenter.org/sites/default/files/TPP%20and%20the%20Political%20Economy%20of%20US-Japan%20Trade%20Negotiations_1.pdf); Author interviews, Japanese government officials, Tokyo and Washington, DC; Niko Asset Management, "The Japanese Government's Objectives for TPP: How the Agreement Could Benefit Japan's Economy," December 22, 2015, [http://www.nikkoam.com.sg/files/documents/news\\_and\\_views/our\\_views/japan\\_update\\_dec\\_2015\\_03.pdf](http://www.nikkoam.com.sg/files/documents/news_and_views/our_views/japan_update_dec_2015_03.pdf); M. Pollmann,

China that Tokyo is at the centre of 21st century coalitions in the Asia Pacific, in order to resist Chinese efforts to dominate regional economic affairs; and catalysing growth and reform at home in the face of intense protectionist interests that threatened to stymie the prime minister's economic liberalisation agenda. For Japan, TPP was in many respects less about the technical details than about the strategic and economic significance of membership in one of the world's premier trading arrangements, tying it to its core ally as well as a range of friendly Asia-Pacific partners. TPP fits directly into Prime Minister Shinzo Abe's frequent calls for a rules-based, transparent, and open Asia-Pacific economic and security order in which disputes are settled peacefully and in accordance with international law.

For Abe, TPP also had a double purpose, being very much a means of using external stimuli to advance his economic liberalisation agenda at home in the face of concerted resistance from protectionist domestic lobbies. TPP is a central pillar of Abe's strategy to make Japan a great economic power again, including by generating new sources of growth. As Abe's former National Security Advisor, former Defence Minister and current Diet Member Yuriko Koike puts it, 'For Japan, the TPP is vital to achieve economic liberalization — the third arrow of "Abenomics," the government's program to revitalise the country's ailing economy. The legislation to enact the TPP will simply push aside the lobbies and vested interests that have been so effective in slowing down or diverting piecemeal reforms.' Attesting to TPP's centrality to Abe's reform agenda at home, senior Japanese officials worry that the anti-free trade tone of the US presidential debate threatens the prospects for US ratification of TPP and with it the Japanese government's ability to use the agreement's enactment to push forward with domestic liberalisation.

### 3.1.3 Negotiating objectives: Canada

Canada had several objectives during TPP negotiations: increase exports of its agricultural products and natural resources to dynamic Pacific Rim economies; deepen economic interdependence with its top trading partner, the United States and diversify its economic relationships beyond north America by investing in closer ties with Asian markets.<sup>33</sup> Canadian leaders also knew that the United States would push for far greater access for TPP trading partners to the Japanese market; therefore Canada's exclusion from the agreement would have eroded its competitive position with respect to Japan.

With respect to all of these calculations, the ultimate TPP negotiations in Atlanta that produced the final agreement were driven, at least in part, by the Canadian election calendar. The outgoing government of Prime Minister Stephen Harper was a strong supporter of TPP, both as a means of enhancing US-Canada economic ties but, equally importantly, to further diversify Canada's trade and investment ties with leading Asian economies. The Obama Administration's 2015 decision not to approve the Canada-US Keystone XL pipeline reinforced the Canadian Government's ambition to deepen its trading links to the growth economies of East and Southeast Asia. But the USA remains Canada's leading economic partner, so Canada was aware that it would suffer if left outside the club once TPP is enacted.

During the final round of TPP talks, polls showed that the opposition Liberal Party led by Justin Trudeau would secure an overwhelming mandate to lead a new government in Ottawa; however, his support for TPP was ambiguous during the campaign. Meanwhile, a third party, the New Democratic Party led by Tom Mulcair, was also performing strongly in the polls and was publicly opposed to TPP, in part due to its

"What the TPP Means for Japan," The Diplomat, October 08, 2015, <http://thediplomat.com/2015/10/what-the-tpp-means-for-japan/>; M. Bradtke, "How the Trans-Pacific Partnership Benefits Japan," Asia Society, March 14, 2016, <http://asiasociety.org/blog/asia/how-trans-pacific-partnership-benefits-japan>.

<sup>33</sup> Government of Canada, "Trans-Pacific Partnership," <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/index.aspx?lang=eng>; A. Russell and N. Logan, "Canada Has Signed the TPP. Now Should We Ratify It?," Global News, February 04, 2016, <http://globalnews.ca/news/2497741/canada-has-signed-the-tpp-now-should-we-ratify-it/>; S. Sinclair and S. Trew, "The TPP and Canada," May 2015, [https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/05/TPP\\_and\\_Canada.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/05/TPP_and_Canada.pdf).

base of support in western Canada, whose agricultural communities felt threatened by liberalised trade in their sector.<sup>34</sup> The Canadian federal election on 19 October 2015 did indeed depose the Harper government and usher in a strong majority for the Liberals, however, the final TPP negotiations had been concluded two weeks earlier. At that time, candidate Trudeau had expressed scepticism towards the TPP and took a 'wait-and-see' approach.<sup>35</sup> But by early 2016, Prime Minister Trudeau's Minister for International Trade, Chrystia Freeland announced that Canada would sign the agreement.<sup>36</sup>

### 3.1.4 Negotiating objectives: Australia & New Zealand

The negotiating objectives of Canberra and Wellington encompassed a mix of economic and strategic motives.<sup>37</sup> Both countries have China as their largest trading partner, based primarily on their exports of primary products like natural resources and agricultural goods, to the vast Chinese market. But both countries are military treaty allies of the United States and are anxious about being torn between economic dependency on China and reliance for their security on partnerships with the USA. Similar to the United States, Australia, in particular, enjoys close security ties to Japan, so for Canberra TPP advances a strategic objective of forging more intimate strategic relations with other US allies in the Asia-Pacific. Leaders in Australia and New Zealand, with their relatively small economies, also saw the opportunity to benefit from the US drive to use TPP to further open the Japanese market to foreign trade and investment, securing greater gains for Canberra and Wellington than they could otherwise secure through bilateral FTAs with Tokyo. Both New Zealand and Australia also wish to diversify their economic relationships beyond China by deepening economic links with North America and east and southeast Asian nations. Sectoral, Australia and New Zealand were focused on enhancing market access for agricultural products, including dairy exports and wool, but both are also advanced economies interested in TPP's provisions on issues of finance, intellectual property, internet freedom, government procurement and other areas. While New Zealand sought to drive a hard bargain over liberalisation of access for its dairy exports to bigger TPP markets, in the final negotiations, Australia forced the United States to compromise on patent protections for pharmaceuticals called biologics. This played well with Australian retirees hoping to benefit from US pharmaceutical innovations, but created a hurdle to ratification of the TPP agreement in the US Congress, as discussed further below.

### 3.1.5 Negotiating objectives: Southeast Asian states

TPP's southeast Asian signatories had diverse negotiating objectives for the agreement.<sup>38</sup> Singapore is a world-class finance and logistics hub; its interest in 'behind-the-border' regulatory liberalisation was a driver, but so was its broader determination to embed itself in FTAs with every major economy, given the

<sup>34</sup> S. Chase, "NDP Government Would Not Adhere to a TPP Deal, Mulcair Says in Letter," The Globe and Mail, October 02, 2015, <http://www.theglobeandmail.com/news/politics/ndp-government-would-not-adhere-to-a-tpp-deal-mulcair-says-in-letter/article26631467/>.

<sup>35</sup> Liberal Party of Canada, "Statement by Liberal Party of Canada Leader Justin Trudeau on the Trans-Pacific Partnership," October 05, 2015, <https://www.liberal.ca/statement-by-liberal-party-of-canada-leader-justin-trudeau-on-the-trans-pacific-partnership/>.

<sup>36</sup> T. Walkom, "Justin Trudeau Government Inches Toward Trans-Pacific Partnership Deal," The Star, January 27, 2016, <http://www.thestar.com/news/canada/2016/01/27/justin-trudeau-government-inches-toward-trans-pacific-partnership-deal-walkom.html>.

<sup>37</sup> Elizabeth Ward, "Opening Statement", address, Joint Standing Committee on Treaties: Trans-Pacific Partnership, Canberra, February 22, 2016; New Zealand Foreign Affairs & Trade, "Trans-Pacific Partnership National Interest Analysis," Trans-Pacific Partnership, January 25, 2016, <https://tpp.mfat.govt.nz/assets/docs/Trans-Pacific%20Partnership%20National%20Interest%20Analysis,%2025Jan2016.pdf>.

<sup>38</sup> Ministry of Trade and Industry Singapore, "Trans-Pacific Partnership (TPP)," <https://www.mti.gov.sg/MTIInsights/Pages/TPP.aspx>; Ministry of International Trade and Industry, "Trans-Pacific Partnership (TPP)," <http://www.miti.gov.my/index.php/pages/view/2087>; H. Marston, "What the Trans-Pacific Partnership Means for Southeast Asia," The Diplomat, July 27, 2015, <http://thediplomat.com/2015/07/what-the-trans-pacific-partnership-means-for-southeast-asia/>; Joshua Kurlantzick, "What Will the TPP Mean for Southeast Asia?," Council on Foreign Relations, June 25, 2015, <http://blogs.cfr.org/asia/2015/06/25/what-will-the-tpp-mean-for-southeast-asia/>.

city-state's status as a global trade and services entrepôt. Malaysia is a developed economy, albeit significantly poorer than Singapore, and also a trading state, but with significant natural resources; including oil, gas and palm oil, whose export it seeks to promote. Vietnam is a poor, developing economy that has relied on low-cost mass-manufacturing for export, following the earlier Chinese model of the 1990s and 2000s, for its recent prosperity. Studies show that, given its low level of development, Vietnam will be one of the biggest beneficiaries of TPP, particularly given the catalyst of liberalised trade for its exports to the large economies of Japan and the United States.

Beyond their economic objectives as TPP signatories, these states all pursue a foreign policy of seeking to enmesh the United States and other friendly powers in southeast Asia, in order to create economic and political ballast against disproportionate Chinese economic power in the region. Singapore, in particular, has led this strategy for decades, carefully cultivating its partnership with the United States through security and economic agreements, in order to ensure it remains regionally engaged as a partner of small southeast Asian powers whose independence would be at risk in the absence of great power partners. In this context, Vietnam's support for TPP is particularly significant. It is not a traditional US military ally or leading trading partner, but a principal negotiating objective for Hanoi was to embed itself into a US-led economic network in Asia, so as to facilitate broader strategic cooperation and balance Vietnam's close, but fraught, ties to China.

### 3.1.6 Negotiating objectives: Latin American states

As with Canada, Mexico was determined to be a party to TPP so that the integrity of north American economic integration through NAFTA would not be undercut by a separate, preferential US-Canadian trading relationship with Pacific Rim economies that did not include Mexico. An additional negotiating objective for Mexico was to take advantage of TPP's liberalised investment provisions to attract greater Asian investment in manufacturing production for the north American market.

All three Latin TPP members seek to deepen their role in global value chains, which TPP enactment will facilitate.<sup>39</sup> Chile and Peru are both free-trading Pacific Rim economies that are also members of APEC; Mexico and Chile already enjoy FTAs with Japan, although they expected that TPP would expand the level of market access these agreements provide in Japan. Their negotiating objectives in TPP were focused on deepening economic integration with both the United States and with dynamic Asian markets, in order to escape the protectionism of Latin American economic groupings like MERCOSUR. Indeed, the three Latin TPP members – Chile, Mexico, and Peru – along with Colombia, launched a new grouping in 2011, the Pacific Alliance, to advocate for liberalised trade with North America and big Asian markets in a rejection of the state-led approach to development behind higher tariff barriers pursued in other major Latin American economies, such as Brazil and Argentina. TPP became the primary vehicle through which these Latin states could realise that objective, and the absence of Colombia in TPP, despite its status as a founding member of the Pacific Alliance and a free trade partner of the United States, suggests that it could accede to TPP in time.

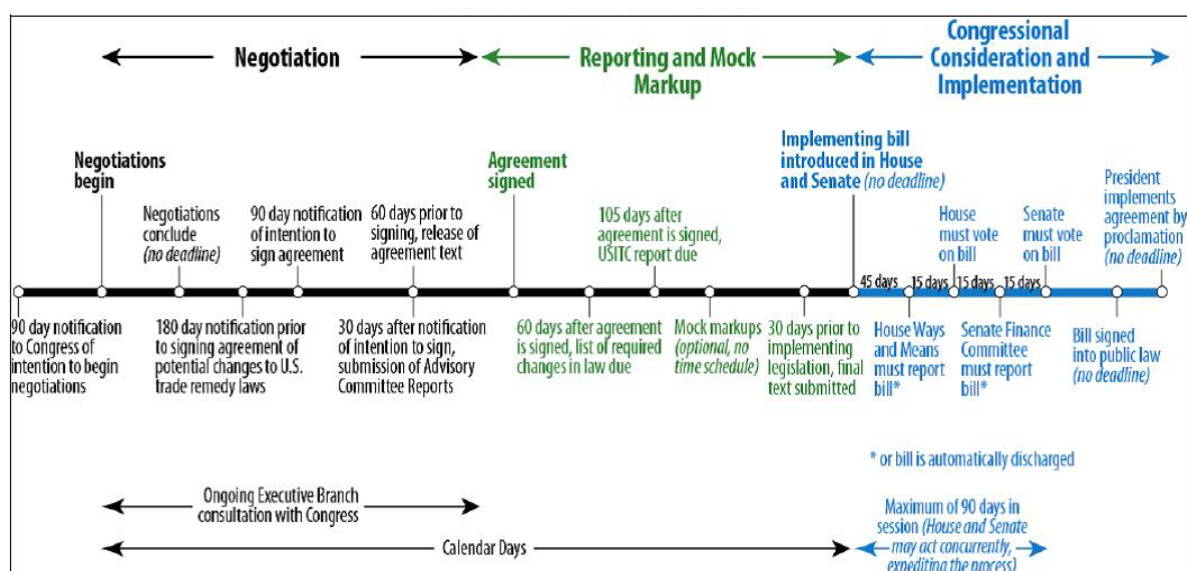
<sup>39</sup> A. Estevadeordal, "What the TPP Means for Latin America and the Caribbean," Brookings Institution, March 09, 2016, <http://www.brookings.edu/research/opinions/2016/03/09-tpp-latin-america-caribbean-estevadeordal>; B. Kotschwar and J. J. Schott, "The Next Big Thing? The Trans-Pacific Partnership & Latin America," Americas Quarterly, Spring 2013, <http://www.americasquarterly.org/next-big-thing-trans-pacific-partnership>.

## 3.2 US stakeholder reactions

### 3.2.1 US political leadership

President Obama was only able to instruct his negotiators to reach a final deal on TPP after his administration won Trade Promotion Authority (TPA) on Capitol Hill, which authorises the President to negotiate trade agreements that can then be fast-tracked through the Congress on a simple up-or-down majority vote, without amendment. But Obama relied overwhelmingly on Republican votes to secure TPA, with the vast majority of elected legislators from his Democratic Party opposed it. There was overwhelming Republican support in Congress for TPP, but only 13 Senate Democrats and 28 in the House of Representatives voted for TPA. Figure 7 outlines the official procedure for the negotiation and implementation of FTAs.

Figure 7: Congressional timeline for FTAs



Source: Lincicome, *The Federalist*, 2015.

Despite strong Republican support for TPA, the reaction of Congressional Republicans to the final TPP text was muted. Then-Chairman of the House Ways and Means Committee (which oversees trade policy), and now Speaker of the House, Paul Ryan reserved judgment. Saying he wanted to support 'a good agreement', he reserved judgment about the final terms and raised concerns about some aspects of the deal.<sup>40</sup> Orrin Hatch, Chairman of the Senate Finance Committee which oversees trade policy in that legislative body, reiterated his strong support for TPP in principle, but questioned whether the Obama Administration had struck a deal consistent with its declared free trade negotiating objectives. As he put it on the Senate floor, 'Unfortunately, when we look at some of the outcomes of the final round of negotiations, it's not clear if the administration achieved that goal. For example, it is not immediately apparent whether the agreement contains administrable and enforceable provisions to protect intellectual property rights [for biologic pharmaceuticals]...' Aside from biologics, there are other elements that, according to initial reports, may have fallen short of Congress' negotiating standards. For example, there are issues with some of the market access provisions on agriculture, the inclusion of product- and sector-specific carve-outs from some of the obligations, as well as some potential overreaching on labour commitments. While we can't make final determinations on any of these issues

<sup>40</sup> Committee on Ways and Means, "Ryan Statement on Conclusion of TPP Negotiations," October 05, 2015, <http://waysandmeans.house.gov/ryan-statement-on-conclusion-of-tpp-negotiations/>.

without seeing the final text of the agreement, initial indications are that these items could be problematic when the agreement is submitted to Congress for approval.<sup>41</sup> These and other Congressional leaders maintained their reservations when the full text of the TPP agreement was subsequently released.<sup>42</sup>

The tepid response of pro-trade committee chairmen in the House and Senate to the final TPP agreement was unusual, given how hard they had fought to secure trade negotiating authority for the Obama Administration to complete the deal. The response of leading Democrats was even more alarming. The ranking Democrat on the House Ways and Means Committee, Sander Levin, came out in opposition to the final TPP agreement, saying it did not do enough to address currency manipulation by US trading partners or protect workers' rights in the United States.<sup>43</sup> The ranking Democrat on the Senate Finance Committee voted against Trade Promotion Authority for President Obama to conclude TPP and expressed opposition to the Pacific trade pact.<sup>44</sup>

As striking as congressional ambivalence or opposition to the TPP agreement, have been the similar sentiments of leading presidential candidates from both political parties. Democratic candidate Hillary Clinton, who as Secretary of State had called TPP 'the gold standard' of trade deals and made it a centrepiece of the Obama Administration's 'pivot' to Asia (of which she was the most public champion), declared on the campaign trail in late 2015 that she did not support the final agreement.<sup>45</sup> Her principal opponent for the Democratic Party's nomination, Senator Bernie Sanders of Vermont, came out even more stridently against the deal.<sup>46</sup> Leading Republican presidential candidates also repudiated the deal, which is striking for a traditionally pro-free trade party. Tycoon Donald Trump called it 'disastrous'.<sup>47</sup> Senator Ted Cruz reversed his position, after arguing in favour of TPP in the pages of the *Wall Street Journal*, by condemning the final agreement.<sup>48</sup>

The political tempest over trade raises hard questions about the US commitment to an open world economy. The success of anti-free trade candidates in both the Democratic and Republican presidential campaigns of 2016 suggests that the popular consensus in favour of open trade is eroding in light of global pressures on US manufacturing and workers.<sup>49</sup>

<sup>41</sup> "Hatch: TPP Must Be Balanced, Hold Trading Partners Accountable & Meet Congressional Requirements," Office of Senator Orrin Hatch, October 07, 2015, <http://www.hatch.senate.gov/public/index.cfm/speeches?ID=5938d349-96cc-4025-9d22-80436b76e6b4>.

<sup>42</sup> M. McCartin and K. McLure, "What's Next for TPP: Will Congress Ratify in 2016?" Global Policy Watch, January 21, 2016, <https://www.globalpolicywatch.com/2016/01/whats-next-for-tpp-will-congress-ratify-in-2016/>; D. Dayen, "For Trade Deal, Bad News Keeps Mounting," The American Prospect, February 1, 2016, <http://prospect.org/article/trade-deal-bad-news-keeps-mounting>.

<sup>43</sup> K. Snell, "Top House Democrat on Trade Opposes Trans-Pacific Partnership," Washington Post, February 8, 2016, <https://www.washingtonpost.com/news/powerpost/wp/2016/02/18/top-house-democrat-on-trade-opposes-trans-pacific-partnership/>.

<sup>44</sup> J. Mapes, "Ron Wyden Joins Fellow Democrats in Blocking Trade Bill," The Oregonian, May 12, 2015, [http://www.oregonlive.com/mapes/index.ssf/2015/05/ron\\_wyden\\_joins\\_fellow\\_democra.html](http://www.oregonlive.com/mapes/index.ssf/2015/05/ron_wyden_joins_fellow_democra.html).

<sup>45</sup> L. Carroll, "Hillary Clinton Flip-Flops on the Trans-Pacific Partnership," Politifact, October 15, 2015, <http://www.politifact.com/truth-o-meter/statements/2015/oct/08/hillary-clinton/hillary-clinton-now-opposes-trans-pacific-partners/>.

<sup>46</sup> R. Barkan, "Bernie Sanders Calls Agreement of Trans-Pacific Partnership 'Disastrous'," The Observer, October 5, 2015, <http://observer.com/2015/10/bernie-sanders-calls-agreement-of-trans-pacific-partnership-disastrous/>.

<sup>47</sup> D. J. Trump, "Disappearing Middle Class Needs Better Deal on Trade: Job-Killing Trans-Pacific Partnership Must be Stopped," USA Today, March 14, 2016, <http://www.usatoday.com/story/opinion/2016/03/14/donald-trump-tpp-trade-american-manufacturing-jobs-workers-column/81728584/>.

<sup>48</sup> Elaina Plott, "Ted Cruz's Protectionist Gamble," National Review Online, November 04, 2015, <http://www.nationalreview.com/article/427539/ted-cruz-tpp-opposition-gamble>.

<sup>49</sup> Bob Davis, "Free Trade Loses Political Favor," *Wall Street Journal*, March 09, 2016, <http://www.wsj.com/articles/free-trade-loses-political-favor-1457571366>.

### 3.2.2 Business reaction

American private sector leaders cautiously welcomed the final TPP deal, with industry groups like the US Chamber of Commerce and the Business Roundtable supporting it.<sup>50</sup> But whereas much TPP support was diffuse, opposition was concentrated in several key sectors. Pharmaceutical executives reacted very negatively to the fact that the final deal only provides intellectual property protection on biologics for 5 years, versus the 12 years required under US law. US Trade Representative Froman insisted that in fact the final deal contained a '5+2' provision to protect the intellectual property of biologics producers for an additional period, but Australian officials declared that in their interpretation only the 5 year restriction applied, a position echoed by other member states eager to exploit US innovations in biologic medicine. American pharmaceutical executives insisted that they could not profitably develop these pioneering drugs with such a short window of time in which to secure returns on their investment in these medicines before protections on their intellectual property expired.<sup>51</sup>

The final TPP agreement also deprives US producers of tobacco products from certain legal protections afforded other US industries, angering key Republicans. Under the TPP's terms, tobacco manufacturers will not be able to file claims using investor-state dispute settlement (ISDS), in the event of an indirect expropriation, including erosion of their intellectual property rights – a carve-out that tobacco companies believe discriminates directly against them. This provision pleases anti-tobacco groups that generally support the Democratic Party in American elections; insiders argued that the Obama Administration's trade negotiators did this deliberately for reasons of domestic politics. As a result, a handful of Republican Senators from key tobacco-growing states, including Senate Majority Leader Mitch McConnell (who represents Kentucky), said they could not support ratification of the TPP agreement.<sup>52</sup>

The automotive industry was the third major sector that raised alarm in the United States over the terms of the final TPP agreement. A special chapter in the final TPP text relates to US-Japan automotive trade, but US automotive company executives lamented the long-time horizons (spanning several decades) over which Japan will liberalise automotive imports. Highlighting the very low level of foreign-automotive penetration of the Japanese market compared with those of its neighbours, they argued that, even under TPP, Japan would retain an essentially closed market for automobiles and light trucks, and that US negotiators erred in not pushing Japan to comply with standards adopted by other American trading partners. Representatives of US car manufacturers emphasised that their concerns were not just about access to the Japanese market, but were also about illegal support for Japanese exports via the Japanese government's manipulation of the value of the yen. Indeed, executives from companies like Ford sought to speak not just for the US automotive industry, but for American manufacturing companies more broadly in underscoring how the Japanese Central Bank's policies of quantitative easing had substantially devalued the yen, making Japanese imports artificially cheap and difficult for American firms operating under a strong dollar regime to compete with. American automobile companies withheld support for TPP following the release of the agreement's full text, promising to take their grievances to

<sup>50</sup> U.S. Chamber of Commerce, "U.S. Chamber Statement of Support for the Trans-Pacific Partnership," January 06, 2016, <https://www.uschamber.com/press-release/us-chamber-statement-support-the-trans-pacific-partnership>; Business Roundtable, "America's Business Leaders Support Trans-Pacific Partnership," January 05, 2016, <http://businessroundtable.org/media/news-releases/america%E2%80%99s-business-leaders-support-trans-pacific-partnership>.

<sup>51</sup> Author interviews with Rod Hunter, Senior Vice President for International Affairs, Pharmaceutical Research and Manufacturers of America (PhRMA), Washington, DC, February 2016.

<sup>52</sup> V. Needham, "Tobacco 'Carve-Out' Sparks Bid to Sink TPP," The Hill, October 08, 2015, <http://thehill.com/policy/finance/256311-tobacco-carve-out-sparks-bid-to-sink-tpp>.

Capitol Hill and, potentially, to lobby a future US administration to reopen TPP's automobile chapter or, more realistically, to reach a more desirable bilateral side agreement with the Japanese government.<sup>53</sup>

### 3.2.3 Civil society reaction

TPP contains the highest labour standards in any US trade agreement, protecting the rights of workers in all member states to organise. But some US labour and human rights groups argued that these provisions did not go far enough and would continue to expose workers in poorer TPP member states to potential abuse.<sup>54</sup> Human rights activists also worried that TPP would strengthen the hand of governments that have not sufficiently cracked down on human trafficking.<sup>55</sup>

TPP also contains ambitious standards on the environment, including measures protecting fish stocks and wildlife, setting a new and historic standard for trade agreements. Nonetheless, some environmental advocacy groups in the United States criticised it for its lack of effective measures to combat climate change.<sup>56</sup>

More broadly, anti-globalisation and anti-free trade civic movements criticised TPP for being negotiated in secret, for advancing the interests of big multinational corporations at the expense of workers and consumers, and for propping up less-than-democratic governments in countries such as Brunei, Malaysia and Vietnam.<sup>57</sup>

## 3.3 Ratification challenges

Most TPP signatories either do not need to ratify the agreement legislatively, or if they do ratification is straightforward since they control governing majorities in parliament. The main question mark surrounding ratification is the United States, by far the TPP's largest member economy, and one in which the cleavages between the executive and legislative branches are pronounced. President Obama secured a hard-won victory by winning Trade Promotion Authority in 2015, setting the stage for congressional consideration of TPP. Under the law, Congress will consider TPP on a simple-majority, up-or-down vote without the possibility of amendment, which would force the reopening of negotiations. TPP can only be enacted following congressional approval; the President does not enjoy the authority to implement international trade agreements without it, since the US Constitution grants the House of Representatives authority over tariffs and the Senate the duty of ratifying treaties. As the former US diplomat and German Marshall Fund Fellow Peter Chase puts it, 'TPA is a long-term way of settling the turf wars between the two houses of Congress and the executive branch' over trade.<sup>58</sup>

However, there are significant hurdles to congressional approval of the agreement, many of which were touched on in the previous section. First, a supermajority of the President's own Democratic Party in the

<sup>53</sup> Author interviews with Stephen Biegun, Vice President for International Government Affairs, Ford Motor Company, Washington, DC, February 2016.

<sup>54</sup> "Q&A: The Trans-Pacific Partnership," Human Rights Watch, January 12, 2016, <https://www.hrw.org/news/2016/01/12/qa-trans-pacific-partnership>; "Ten Critical Problems with the Trans-Pacific Partnership," AFL-CIO, accessed April 29, 2016, <http://www.aflcio.org/Issues/Trade/Trans-Pacific-Partnership-Free-Trade-Agreement-TPP/Ten-Critical-Problems-with-the-Trans-Pacific-Partnership>.

<sup>55</sup> Z. Carter, "Obama Shrugs Off Global Slavery to Protect Trade Deal," Huffington Post, July 27, 2015, [http://www.huffingtonpost.com/entry/malaysia-human-trafficking-tpp\\_us\\_55b66521e4b0224d8832fe28](http://www.huffingtonpost.com/entry/malaysia-human-trafficking-tpp_us_55b66521e4b0224d8832fe28).

<sup>56</sup> "A Dirty Deal - How the Trans-Pacific Partnership Threatens Our Climate," Sierra Club, December 2015, <https://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/dirty-deal.pdf>.

<sup>57</sup> "Trans-Pacific Partnership: More Job Offshoring, Lower Wages, Unsafe Food Imports," Public Citizen, Washington, DC, various critical reports available at <http://www.citizen.org/TPP>; Communications Workers of America, "TPP: The Trade Bill That Puts Corporate Profits Over Human Rights Abuses & Religious Persecution," Stop the TPP, accessed April 29, 2016, <http://stopthetpp.org/the-trans-pacific-partnership-ignores-religious-persecution-human-rights-abuses-and-humanitarian-crises-for-corporate-profits/>.

<sup>58</sup> Author mail exchange with Peter Chase, March 24, 2016.

House and Senate oppose the TPP agreement, making him overwhelmingly reliant on Republican votes to secure enactment. For their part, many Republicans in Congress are ambivalent about the final TPP text. Their corporate constituents are unhappy about its pharmaceutical, tobacco, and automobile related provisions. The US business community and friendly Republicans in Congress question the presence in the agreement of the strongest provisions in any US trade pact on workers' rights and environmental protection which, alongside the stripping of legal protections under international trade law for the tobacco industry, appear to represent the Obama Administration's use of an international commercial agreement to advance a social agenda rooted in Democratic Party politics. Given the lack of support among congressional Democrats and only lukewarm support among congressional Republicans, it is not clear the President can cobble together a simple majority in favour of TPP.

Nor is it clear whether the President intends to try, at least before the November 2016 US elections. After moving very slowly on TPP during the first 6-7 years of his administration, President Obama gave his negotiators the authority to make a final aggressive push to secure the deal in 2015. However, the consequence of this approach has been to submit the TPP pact to Congress during a volatile and polarised election year, at a time when many officials of both political parties consider the President a lame duck. From the perspective of the US political calendar, there are few worse times to submit a major and controversial trade pact to the Congress than during a presidential election year, much less one in which anti-free trade populists like Donald Trump and Bernard Sanders command so much media attention. Meanwhile, members of Congress worried about their own re-election and party prospects are unwilling to cast hard votes on behalf of a President who will be only a historic figure, rather than a governing one, in a matter of months.

Finally, the rules for congressional consideration of trade agreements mean that the congressional review period before TPP can be subjected to a vote preventing any action until after the summer, pushing consideration to the end of the current congressional term, and forcing TPP to compete with spending and other must-pass legislation on the House and Senate agendas.<sup>59</sup>

In light of these dynamics, many observers expect that the Obama Administration's current strategy is to seek a vote in Congress on TPP after the November 2016 US presidential election. This timing would obviate the need for members of Congress running for re-election to cast a tough vote before the American people go to the ballot box. It would remove TPP from the heat of the US presidential campaign, postponing congressional consideration of it until partisan tempers have cooled following the election of a new American president. However, as noted above, congressional leaders in November and December may have priorities other than sealing the trade legacy of a president serving out his twilight weeks in office; additionally, the president-elect may prefer that Congress wait to act, rather than pressure the incoming administration into a trade pact they may wish to renegotiate or claim credit for. Moreover, the fact that congressional support for the current TPP agreement is weak means that it simply may not have the champions necessary within the House and Senate leadership to place it on the calendar of must-do business before Congress adjourns at the end of the year.

Both the North American Free Trade Agreement (NAFTA) and the Korea-US Free Trade Agreement (KORUS) were negotiated by US administrations that were not in office when they were ratified and enacted. Indeed, NAFTA was negotiated by the Republican administration of President George H.W. Bush and only enacted under his Democratic successor, President William J. Clinton. Similarly, KORUS was agreed by the Republican administration of President George W. Bush and only enacted by his Democratic successor, President Barack Obama. In these cases, Presidents Clinton and President Obama

<sup>59</sup> P. Levy, "The TPP and Its Ticking Clocks," Foreign Policy, February 04, 2016, <http://foreignpolicy.com/2016/02/04/the-tpp-and-its-ticking-clocks/>.

reopened parts of the agreement to negotiate what they believed were better terms before they submitted revised agreements to Congress which were ultimately ratified. This may be the most likely precedent for TPP, which might strengthen congressional and public support for the deal, but means it may not be implemented until sometime in 2017. However, there remains a chance that a lame duck session of Congress in 2016 could ratify the deal, if President Obama uses his political capital to twist arms on Capitol Hill and declares congressional approval essential to his signature trade initiative in office.

## 4 TPP and TTIP

The reduced ambitions of the Doha Round, a World Trade Organization-led multilateral process to liberalise global trade, have led to resurgence in bilateral and plurilateral free trade agreements. Among the most significant of these are the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP). The two agreements are viewed by many as the best prospect to further the goal of trade liberalisation and develop rules and practices beyond those already covered by the WTO. As a result of the economic and political weight of the actors involved, TTIP and TPP could have a significant impact in establishing global trade norms, a stated goal for both agreements. That, however, is where the similarities between the two agreements end.

The differences in both the politics and content of TTIP and TPP are substantial. While TTIP covers 29 countries, it is a negotiation between only two parties – the United States and the EU. TPP, on the other hand, is a 12-way negotiation between a diverse set of countries. The two negotiating partners in TTIP, the USA and the EU, are the biggest and most advanced trading entities in the world, while the TPP members vary significantly in their economic size and development level, with the US economy approximately four times the size of the second biggest member, Japan, and approximately 1000 times bigger than that of the smallest member, Brunei.<sup>60</sup> Furthermore, trade relations between EU member states and the United States are much more developed than those between TPP counties. This means that the two agreements also differ in certain ways.

### 4.1 The old and new worlds of trade

Pascal Lamy, formerly a European Commissioner for Trade and Director-General of the WTO, has argued that the focus of trade agreements is moving from protection to precaution.<sup>61</sup> In what he calls the ‘old world’ of trade, national trade policies were about protecting domestic producers from foreign competition through tariffs and quotas. For example, traditional trade agreements aimed at reducing tariffs and fostering competition for the sake of more consumer freedom and a more efficient, and hence cheaper, supply of goods. However, in what Lamy calls the ‘new world’ of trade, government measures that affect trade are primarily laws designed to protect citizens and consumers from risks they do not want to take. Although Lamy acknowledges that there can be a grey zone between them – regulation and standards can be used as protectionist measures – in short, the ‘old world’ was about protection and the ‘new world’ is about precaution.

According to Lamy, TPP is ‘in many ways the last show of the old world’ and TTIP the first of the new world, although he concedes that we are currently still ‘somewhere in between’ the two worlds of trade.<sup>62</sup> Others, however, have noted that in fact most current trade negotiations are still ‘old-fashioned’, as they are mostly still ‘occupied with sectors that are not at the forefront of economic expansion’.<sup>63</sup> As we shall see, both agreements deal with a number of issues touching on ‘the new world of trade’. Yet, given the significantly varying levels of economic development and regulatory sophistication among the TPP members, ‘TTIP is more likely to make substantial progress on regulatory convergence’,<sup>64</sup> as mutual recognition or harmonisation of regulatory standards requires member states to trust each other’s governance systems.

<sup>60</sup> The World Bank, April 11, 2016, <http://databank.worldbank.org/data/download/GDP.pdf>.

<sup>61</sup> P. Lamy, “The New World of Trade,” ECIPE, May 2015, <http://ecipe.org/publications/new-world-trade/>.

<sup>62</sup> Lamy, 2015.

<sup>63</sup> F. Erixon et al., Trans-Pacific Partnership. A Challenge to Europe (ECIPE, 2014), p. 2, <http://ecipe.org/publications/tpp/>.

<sup>64</sup> R. Baldwin, “The Systemic Impact,” ed. Global Agenda Council on Trade & Foreign Direct Investment, in *Mega-regional Trade Agreements Game-Changers or Costly Distractions for the World Trading System?*, World Economic Forum, 2014, p. 27, [http://www3.weforum.org/docs/GAC/2014/WEF\\_GAC\\_TradeFDI\\_MegaRegionalTradeAgreements\\_Report\\_2014.pdf](http://www3.weforum.org/docs/GAC/2014/WEF_GAC_TradeFDI_MegaRegionalTradeAgreements_Report_2014.pdf).

## 4.2 The origins of TPP and TTIP

As well as the content, the genesis and evolution of the two agreements also differ considerably. Whereas membership of TTIP has always been conceived of as encompassing only the United States and the EU, TPP was originally conceived in 2003 as a smaller agreement – the Trans-Pacific Strategic Economic Partnership between Singapore, New Zealand, and Chile (later joined by Brunei). The United States, together with Australia, Peru, and Vietnam only declared its intention to join in 2008. In the following years, TPP was expanded to its ultimate size of 12 countries by including Malaysia (2010), Canada (2012), Mexico (2012) and finally Japan (2013). Other countries (notably Indonesia and South Korea), though not members at the time of signing, have expressed interest in joining the agreement.

As we saw in Chapter 2, TPP should be seen in the context of the US response to the rise of China. A similarly strategic case has been made for TTIP. This was reflected, for example, in early attempts to brand TTIP as an 'economic NATO',<sup>65</sup> a label that has since been dropped after being poorly received in Europe. In the aftermath of Russia's annexation of Crimea at the beginning of 2014, there has also been an argument that TTIP would help counter the Russian threat to Europe.<sup>66</sup> In particular, some have argued that provisions on energy giving European countries access to US crude oil and liquefied natural gas exports could help reduce Europe's dependence on Russian gas.<sup>67</sup> Others have also made the case that it would not be in the European interest in the long term to be left out as larger regional trade blocs emerge. Finally, and similarly to TPP, the transatlantic trade pact has also been cited as an opportunity to shape international economic standards long into the future,<sup>68</sup> in order to protect the established economic framework in the face of challenges from emerging economies, such as China.<sup>69</sup> But whereas there was a strategic rationale for TPP from the moment the United States joined negotiations, TTIP originally had an economic rather than strategic motivation.

European and US stakeholders had been discussing the possibility of creating a transatlantic free trade area (TAFTA) for decades. Corresponding transatlantic efforts to increase economic cooperation, like the New Transatlantic Agenda (NTA), the Transatlantic Economic Partnership (TEP) and the Transatlantic Economic Council (TEC), preceded official trade negotiations, but repeatedly failed to meet expectations. It was not until 2011 – against the background of the euro crisis – that leaders on both sides of the Atlantic agreed on a renewed push and directed the TEC to set up a High-Level Working Group on Jobs and Growth (HLWG) to explore opportunities to increase transatlantic trade. In early 2013, the final report of the HLWG concluded that aiming for a comprehensive transatlantic trade and investment agreement 'would provide the most significant mutual benefit' for the transatlantic partners.

The HLWG final report also included recommendations regarding the structure and content of negotiations, proposing that the transatlantic agreement should focus on three broad areas: market access, regulatory issues and non-tariff barriers (NTBs), and rules. The subsequent EU negotiation mandate adopted by the Council of the European Union in June 2013 also directed EU negotiators to structure TTIP around these three key components. In addition, the negotiation directive of the Council

<sup>65</sup> A. F. Rasmussen, speech, A New Era for EU-US Trade, Confederation of Danish Industry, Copenhagen, October 07, 2013, [http://www.nato.int/cps/en/natolive/opinions\\_103863.htm](http://www.nato.int/cps/en/natolive/opinions_103863.htm).

<sup>66</sup> J. Stavridis, "Vladimir Putin Hates the TTIP," Foreign Policy, November 19, 2014, <http://foreignpolicy.com/2014/11/19/vladimir-putin-hates-the-ttip/>.

<sup>67</sup> R. Korteweg, "It's the Geopolitics, Stupid: Why TTIP Matters," Centre for European Reform, April 02, 2015, <https://www.cer.org.uk/insights/it%E2%80%99s-geopolitics-stupid-why-ttip-matters>.

<sup>68</sup> European Commission, "The Transatlantic Trade and Investment Partnership (TTIP) TTIP Explained," March 19, 2015, [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152462.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152462.pdf).

<sup>69</sup> J. Dempsey, "If the U.S. and Europe Don't Agree on Trade Pact, China Wins," Newsweek, October 12, 2015, <http://europe.newsweek.com/if-us-and-europe-dont-agree-trade-pact-china-wins-334549?rm=eu>.

included specific instructions for European negotiators on such issues as, for example, the exclusion of certain sectors (audio-visual services and defence procurement).

On the US side, neither TTIP nor TPP negotiations were preceded by an official congressional negotiating mandate. The congressional Trade Promotion Authority (TPA), also known as 'fast-track', included in the bipartisan 2002 Trade Act, expired in July 2007 and was not renewed until the summer of 2015. However, in anticipation of the eventual need for congressional approval during ratification, both the administrations of President Bush and President Obama have adhered to the notification and consultation requirements contained in the 2002 Act, and indeed the Obama Administration publicly spelled out its objectives for the TTIP negotiations in a letter to Congress on 20 March 2013. Congressional input, demands, and concerns contributed to the formulation of the Administration's negotiation goals for TPP and TTIP, even though no 'formal' mandate existed on the US side at the outset of either negotiation.

### 4.3 Key issues of the TTIP negotiations

#### **Market access**

Many of the issues negotiated under the market access umbrella are traditional topics of free trade agreements, such as the lowering or removal of tariffs, and were also central to the TPP negotiations. However, with the exception of agricultural products and some peaks in other areas, notably light industrial products such as foods, textiles and apparel, tariffs between the US and EU are already quite low, so the main focus here is on reducing remaining customs duties. For TPP, tariff reduction in a few key industries was one of the tougher areas to negotiate, and promised significant gains.

In addition, government procurement is another important market access issue for TTIP. Indeed, the further opening of US public procurement is one of the major offensive interests of EU negotiators, especially given the 'Buy America' provisions that restrict European access, and member states have already started to assert their interests in this area.

Other market access issues, revolving around trade in services, could prove more challenging as they appear to touch upon contentious questions of cross-border data flows and data privacy concerns. This issue has already caused significant political headaches for European politicians. While various civil society groups raised concerns around the impact intellectual property right provisions might have on data flows and privacy in TPP, it was a far less contentious issue in those negotiations than it has proven to be vis-à-vis TTIP, although the recent conclusion of the US-EU 'Privacy Shield' agreement may help address this.<sup>70</sup>

An 'ambitious' TTIP would also further liberalise investment between the two parties, although neither side really seems to think it will eliminate ownership/control restrictions on airlines, telecommunications infrastructure or some energy areas, for example.

#### **Regulatory cooperation**

As has often been pointed out, improving regulatory cooperation across the Atlantic is at the heart of TTIP. Such efforts are not entirely new. Attempts to remove or minimise regulatory differences between the USA and the EU have been discussed for years, with varying degrees of success. In TTIP, negotiators are addressing these issues in two ways: horizontally, to set up general processes and structures to improve cooperation, and at a sector-specific level in select industry areas, such as, for example, chemicals, automotives and pharmaceuticals. Besides dealing with specific industry interests on either

<sup>70</sup> "European Commission Unveils EU-U.S. Privacy Shield," European Commission, February 29, 2016, [http://ec.europa.eu/justice/newsroom/data-protection/news/160229\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/160229_en.htm).

side of the Atlantic, negotiations in this area will have to find ways to bridge differences in both public preferences and in regulatory approaches to risk management in the USA and the EU.<sup>71</sup>

## Rules

The rules pillar of the TTIP negotiations comprises a variety of issues from labour standards and environmental provisions to intellectual property rights (including geographical indications), and the much-discussed investor protection mechanisms. Notably, the negotiations and political dynamics around some of these topics differ significantly between TTIP and TPP (as we shall see below), perhaps not surprisingly given the varying levels of economic development of TPP members.

## 4.4 The impact of TPP and TTIP on third party countries

Given the size of the economies involved and the breadth and depth of issues covered under the mega-regionals, both TTIP and TPP are likely to impact third party countries outside of the agreements. One key impact would naturally occur if, as argued, the agreements help stimulate growth in all the countries that participate in the two deals. Further, shaping global standards is an explicitly stated goal of both agreements.

The successful conclusion of the mega-regionals would set new standards by aligning differing regulations and norms among the members (or by establishing processes for doing so in the future), which, given the size of the markets involved would intensify pressure on third parties to adapt. Such increased regulatory convergence would significantly reduce costs for businesses within the agreement. Yet outside firms could potentially also stand to benefit, as they would only have to adhere to one, aligned standard or regulation to access the markets of all member states. However, initial adaptation to the new (and presumably often higher) standard may at first be costly.<sup>72</sup>

Still, there is some discussion about potentially detrimental economic effects of mega-regionals on third parties and a number of outside-countries have expressed concern. Most immediately, the rules of origin and cumulation provisions will be critically important to the countries that trade extensively with the parties to these agreements – for countries like Norway, Switzerland and Turkey, how these provisions are structured in TTIP could significantly affect their trade with the EU. It can be assumed that TTIP and TPP will have some trade diversion effects on non-members. However, forecasting the extent of diversion effects is difficult, especially in the case of TTIP, because a final agreement has not been reached and a number of assumptions must thus be included in any calculations. Most studies conclude that TTIP will have small, but negative, trade diversion effects on non-members. However, some TTIP forecasts have found varying degrees of trade diversion effects, including both increased trade with some non-members, decreased with others,<sup>73</sup> and generally positive effects for low-income countries.<sup>74</sup> Some of the

<sup>71</sup> European Commission, Inside TTIP, An Overview and Chapter-by-chapter Guide in Plain English, Publications Office of the European Union, Luxembourg, 2015, [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153635.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153635.pdf); J. Pelkmans, "TTIP: Definition, Rationale and Significance," 50, no. 6, November/December 2015, <http://archive.intereconomics.eu/year/2015/6/ttip-political-and-economic-rationale-and-implications/>.

<sup>72</sup> R. Baldwin, "The Economic Impact," ed. Global Agenda Council on Trade & Foreign Direct Investment, in Mega-regional Trade Agreements Game-Changers or Costly Distractions for the World Trading System?, World Economic Forum, 2014, p. 24, [http://www3.weforum.org/docs/GAC/2014/WEF\\_GAC\\_TradeFDI\\_MegaRegionalTradeAgreements\\_Report\\_2014.pdf](http://www3.weforum.org/docs/GAC/2014/WEF_GAC_TradeFDI_MegaRegionalTradeAgreements_Report_2014.pdf).

<sup>73</sup> See for example: Gabriel Felbermayr, Benedikt Heid, and Sybille Lehwald, Transatlantic Trade and Investment Partnership (TTIP) Who Benefits from a Free Trade Deal?, Bertelsmann Stiftung, Gütersloh, 2013, <http://www.bfna.org/sites/default/files/TTIP-GED%20study%2017June%202013.pdf>.

<sup>74</sup> Steven Brakman, Tristan Kohl, and Charles Van Marrewijk, The Impact of the Transatlantic Trade and Investment Partnership (TTIP) on Low Income Countries, Ministry of Foreign Affairs, The Netherlands, 2015, p. 86, <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2015/11/13/the-impact-of-the-transatlantic-trade-and-investment-partnership-ttip-on-low-income-countries/the-impact-of-the-transatlantic-trade-and-investment-partnership-ttip-on-low-income-countries.pdf>.

positive effects are also in line with research indicating that regional trade agreements may actually lead to 'reverse trade diversion' – that is, an increase in trade among member states, but also an increase in imports from economies outside the agreement.<sup>75</sup>

Overall, given the complexity of modern trade, the intricate structure of global supply chains and the fact that many non-members already have, or may develop, bilateral trade agreements with TTIP and TPP member states, the immediate net economic impact on most third countries is likely to be minimal.

## 4.5 Concerns about TPP and TTIP

Aside from trade diversion effects however, opponents of the two mega-regional trade deals also have other concerns. But the debates have been somewhat different on either side of the Atlantic. Although the public in some countries in Europe have hardly taken notice of ongoing TTIP negotiations, TTIP has become a major and highly antagonistic issue in others, especially Germany and Austria<sup>76</sup>. Meanwhile, in the United States, TTIP has taken a backseat to more contentious debates around the trans-Pacific agreement, in part due to TPP being much further along in the process.

Some of the specific criticisms are similar across the Atlantic, while others differ. Critics in both the United States and in Europe have long lamented the perceived opaqueness of negotiations, regularly branding TPP and TTIP as 'secretive deals', despite efforts by policy-makers to increase access to relevant documents. Such concerns are often amplified on both sides by suspicions that other stakeholders, namely business representatives, are allegedly receiving preferential access to negotiations.

Another shared point of criticism on both sides of the Atlantic is the investment protection mechanisms. Investor protection provisions, such as investor-state dispute settlement (ISDS) have long been included in US and individual EU member states' trade agreements, but have come under intense criticism in both the TPP and TTIP debates. In the US, criticism has been focused mostly on TPP, with a variety of actors taking a critical stance towards ISDS, ranging from members of Congress<sup>77</sup>, labour unions, NGOs, and some academics<sup>78</sup>, to the libertarian CATO Institute<sup>79</sup>. In Europe, ISDS has become 'probably the most contentious issue in the public debate on the negotiations', compelling the EU Commission to suspend negotiations on the topic for more than a year in order to launch a public consultation process, which culminated in a new EU proposal for an Investor Court System (ICS).<sup>80</sup>

However, as well as similar concerns in areas such as transparency and investor protection, there are also differences in the criticisms in the USA and Europe, which in turn point to differences between the two agreements. This is apparent most prominently in fears over lower standards. Such worries exist on both sides of the Atlantic, but differ in their underlying rationale. While those in Europe critical of TTIP fear the

<sup>75</sup> Baldwin, *The Economic Impact*, 2014, p. 24.

<sup>76</sup> I. Dreyer, "EU Public Opinion Support for TTIP Falling," *Borderlex*, January 07, 2016, <http://www.borderlex.eu/blog-eu-public-opinion-support-ttip-falling-biggest-fall-netherlands-cee/>.

<sup>77</sup> E. Warren, "The Trans-Pacific Partnership Clause Everyone Should Oppose," *Washington Post*, February 25, 2015, [https://www.washingtonpost.com/opinions/kill-the-dispute-settlement-language-in-the-trans-pacific-partnership/2015/02/25/ec7705a2-bd1e-11e4-b274-e5209a3bc9a9\\_story.html](https://www.washingtonpost.com/opinions/kill-the-dispute-settlement-language-in-the-trans-pacific-partnership/2015/02/25/ec7705a2-bd1e-11e4-b274-e5209a3bc9a9_story.html).

<sup>78</sup> L. Johnson and L. Sachs, "The TPP's Investment Chapter: Entrenching, Rather than Reforming, a Flawed System," *Columbia Center on Sustainable Investment*, November 18, 2015, <http://ccsi.columbia.edu/2015/11/18/the-tpps-investment-chapter-entrenching-rather-than-reforming-a-flawed-system/>.

<sup>79</sup> D. J. Ikenson, "A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement," *Cato Institute*, March 04, 2014, <http://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state>.

<sup>80</sup> F. De Ville and G. Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* -, Polity, 2015, p. 88; "Commission Proposes New Investment Court System for TTIP and Other EU Trade and Investment Negotiations," *European Commission*, September 16, 2015, [http://europa.eu/rapid/press-release\\_IP-15-5651\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5651_en.htm).

introduction of genetically modified organisms (GMOs) and what they perceive as a lowering of consumer protection standards, worries in the USA often revolve around the disadvantages that lower standards (of, for example, environmental or labour regulations) in some TPP states might bring to US workers. Whereas some in Europe thus worry about the reduction of standards at home, some Americans are concerned about the economic impact of lower standards elsewhere – though it is not always possible to discern actual worries from those that are merely employed for other, potentially protectionist reasons.

In this regard, the TPP debate actually mirrors previous political battles over trade agreements in the USA, and in particular the fight over the North American Free Trade Agreement (NAFTA), with labour representatives even branding the trans-Pacific deal as 'NAFTA on steroids'.<sup>81</sup> In the USA, trade deals are more frequently associated with negative impacts on jobs and wages than in Europe. For example, although 58 % of US-Americans in a recent survey said that trade agreements generally had been a good thing for the USA, clear pluralities thought that they lowered wages (46 %) and led to job losses (46 %).<sup>82</sup> This focus on 'old trade world' concerns, such as job losses, might make TTIP a less controversial topic in the United States than TPP has been, given that high European regulations in such areas as environmental protection and labour standards are not going to be considered an unfair advantage for European workers. Accordingly, American trade unions have been less critical of TTIP and have stated that a transatlantic agreement '*could* be beneficial for both American and European workers'.<sup>83</sup>

## 4.6 TPP and TTIP – two sides of the same coin?

In many discussions, particularly in the USA, TPP and TTIP are often talked about as two sides of the same coin. The two potential agreements are seen as the answer to the stalling of the Doha Round and as the logical next step in tackling modern and new trade issues.

Yet, as we have seen above, while the two mega-regionals share many similarities, and in the short term are likely to have similar and limited economic impacts on third parties, there are also notable differences, for example in domestic political debates and, in part, in the different types of criticism each agreement has received.

TTIP and TPP, however, also point to a diverging strategic outlook. As the United States is party to both agreements, it is often seen as the driver of the move towards mega-regionals. Although the EU has also pursued an ambitious trade strategy in Asia, concluding bilateral agreements with South Korea (2009), Singapore (2014), Vietnam (2015) and continuing negotiations with others such as Japan, its efforts thus far lack the 'unprecedented regional coverage and substantive depth' of TPP<sup>84</sup>. The impact that a finalised and ratified trans-Pacific agreement might have on TTIP negotiations and on EU trade and foreign policy in general might therefore be significant.

<sup>81</sup> B. Mahoney and D. Palmer, "Does Labor Have the Oomph to Stop Obama's Trade Agenda?," POLITICO, March 15, 2015, <http://www.politico.com/story/2015/03/does-labor-have-the-oomph-to-halt-fast-track-116071>.

<sup>82</sup> "Free Trade Agreements Seen as Good for U.S., But Concerns Persist," Pew Research Center, May 27, 2015, <http://www.people-press.org/2015/05/27/free-trade-agreements-seen-as-good-for-u-s-but-concerns-persist/>.

<sup>83</sup> "U.S.-EU Free Trade Agreement (TTIP)," AFL-CIO, accessed April 29, 2016, <http://www.aflcio.org/Issues/Trade/U.S.-EU-Free-Trade-Agreement-TTIP>.

<sup>84</sup> D. Kleimann, "TPP Spurs EU to Make Up Lost Ground in Asia Trade Diplomacy," World Politics Review, February 02, 2016, <http://www.worldpoliticsreview.com/articles/17843/tpp-spurs-eu-to-make-up-lost-ground-in-asia-trade-diplomacy>.

## 5 The impact of TPP on the European Union

In so far as the European public has thought at all about TPP, it has tended to be simply seen as a Pacific counterpart to TTIP. It is assumed to be part of the same trade liberalisation agenda as TTIP and is therefore usually either supported, or opposed, for the same reasons. Supporters who believe TTIP is in the European interest have tended to assume that TPP is also in the European interest, while opponents of TTIP have also tended to be opposed to TPP. Some discussion has also focused on whether attempts by President Obama to pass TPP would increase the chances of passing TTIP – for example, by persuading Congress of the benefits of free trade in general – or conversely, whether an attempt to pass TPP would use up political capital and make it harder to pass TTIP.

However, as we saw in chapter 4, TPP and TTIP can be viewed as very different trade agreements. – as Pascal Lamy puts it, one is among the last agreements of the ‘old world’ of trade while the other is the ‘first agreement’ of the ‘new world’ of trade.<sup>85</sup> In addition, TPP must be understood in the context of US strategy towards Asia, in particular, as a response to the rise of China and as a central component of the Obama Administration’s ‘pivot’ to Asia, as we saw in chapter 2. This makes it different from TTIP, which was originally driven primarily by an economic motivation, as we saw in chapter 4. Given these differences in both the content and the context of the two trade agreements, it is not obvious that TPP is in the European interest – even if TTIP is. This chapter therefore examines in more detail the question of whether TPP is in the European interest.

The EU has in recent years stepped up its engagement with Asia. But beyond basic requirements like peace, open trade and regional integration, member states have not gone very far in terms of defining a shared sense of what Europe’s interests in Asia are.<sup>86</sup> There are tensions between different EU Member States and between the Member States on the one hand and the EU institutions on the other. These tensions tend to revolve around the extent to which Europeans want to promote values in Asia or simply pursue their interests, particularly commercial interests. Moreover, there are tensions about which values to pursue: while some believe above all in promoting peace in Asia, others believe Europe should promote democracy, human rights and the rule of law – even if this involves a confrontation with China. In the end, the question of whether Europeans should support TPP depends on how they resolve these tensions.

### 5.1 The economic impact of TPP

At the most basic level, the EU is in favour of trade liberalisation worldwide, and one could therefore argue that for this reason alone TPP is broadly in the European interest. Opening markets beyond Europe, and in particular in Asia, is seen as an important source of economic growth for EU member states. As well as producing jobs, trade liberalisation reduces prices and creates greater choice for consumers, as imported food, consumer goods and components for products manufactured in Europe become cheaper. Figure 8 illustrates the impact of TPP on the real income of both TPP members and non-members. As we have seen in chapter 3, TPP also explicitly aspires to improve labour standards in

<sup>85</sup> Lamy, 2015.

<sup>86</sup> "EU-Asia Factsheet," European External Action Service, July 14, 2014, [http://eeas.europa.eu/factsheets/docs/20140714\\_factsheet\\_eu-asia\\_en.pdf](http://eeas.europa.eu/factsheets/docs/20140714_factsheet_eu-asia_en.pdf); The EU’s ‘main goals’ are defined as: supporting ASEAN integration and strengthening EU-ASEAN security cooperation, taking part in and promoting regional forums such as participating actively in the ASEAN Regional Forum and the Asia-Europe Meeting, establishing the EU as a credible political and security player in the region in bringing its experience and expertise in institution building and integration, conflict prevention, crisis solution and mediation, delivering human security to the table, supporting the development of a more robust regional architecture, promoting the rule of law, good governance, democracy and respect for universal human rights to strength, developing partnerships with China, Japan, India and the Republic of Korea, promoting sustainable policies to meet global challenges related to security, protecting the economic and trade interests of the EU and its member states.

countries like Vietnam, by protecting the rights of workers to organise and enjoy basic rights. As we have seen in Chapter 2, it could also indirectly promote economic reform in China – which would also be in the European interest.

Figure 8: Real income effects of the TPP

Country	Baseline (billions of 2015 dollars)				Change with TPP (billions of 2015 dollars)			Percent change from baseline		
	2015	2020	2025	2030	2020	2025	2030	2020	2025	2030
<b>Americas</b>	21,962	25,177	28,473	31,544	41	129	205	0.2	0.5	0.7
Canada*	1,981	2,227	2,472	2,717	8	22	37	0.4	0.9	1.3
Chile*	269	329	397	463	0	2	4	0.1	0.5	0.9
Mexico*	1,339	1,598	1,868	2,169	3	11	22	0.2	0.6	1.0
Peru*	219	287	363	442	1	6	11	0.4	1.6	2.6
United States*	18,154	20,736	23,372	25,754	29	88	131	0.1	0.4	0.5
<b>Asia</b>	22,806	29,752	38,179	47,386	52	135	203	0.2	0.4	0.4
Brunel*	20	24	27	31	0	1	2	1.1	3.3	5.9
China	11,499	16,058	21,689	27,839	-1	-8	-18	0.0	0.0	-0.1
Hong Kong	300	358	412	461	2	4	6	0.5	1.0	1.2
India	2,210	3,086	4,197	5,487	0	-2	-5	0.0	-0.1	-0.1
Indonesia	927	1,240	1,687	2,192	0	-1	-2	0.0	-0.1	-0.1
Japan*	4,214	4,462	4,693	4,924	39	91	125	0.9	1.9	2.5
Korea	1,384	1,672	1,967	2,243	-1	-5	-8	-0.1	-0.2	-0.3
Malaysia*	349	444	553	675	7	28	52	1.6	5.0	7.6
Philippines	329	436	547	680	0	-1	-1	0.0	-0.1	-0.1
Singapore*	320	380	437	485	2	8	19	0.5	1.9	3.9
Taiwan	511	619	707	776	0	1	1	0.1	0.1	0.2
Thailand	411	516	656	812	-1	-4	-7	-0.2	-0.6	-0.8
Vietnam*	209	281	378	497	7	22	41	2.3	5.8	8.1
ASEAN nie	124	175	228	283	0	-1	-1	-0.1	-0.2	-0.4
<b>Oceania</b>	1,896	2,203	2,533	2,854	2	12	21	0.1	0.5	0.7
Australia*	1,704	1,986	2,292	2,590	1	8	15	0.0	0.4	0.6
New Zealand*	192	217	241	264	1	4	6	0.5	1.5	2.2
<b>Rest of world</b>	34,371	39,492	45,506	52,017	16	44	62	0.0	0.1	0.1
European Union	17,893	19,746	21,451	23,189	12	34	48	0.1	0.2	0.2
Russia	2,244	2,462	2,903	3,371	0	1	2	0.0	0.0	0.1
ROW	14,235	17,283	21,152	25,456	3	8	12	0.0	0.0	0.0
<b>World</b>	81,035	96,623	114,690	133,801	111	319	492	0.1	0.3	0.4
<b>Memorandum</b>										
TPP members	28,969	32,971	37,094	41,011	98	291	465	0.3	0.8	1.1
Non-members	52,066	63,652	77,596	92,790	13	28	27	0.0	0.0	0.0

ASEAN = Association of Southeast Asian Nations; nie = not included elsewhere; ROW = rest of world

Note: Asterisk denotes TPP member.

Source: Authors' simulations.

Source: Petri and Plummer, Peterson Institute for International Economics, 2016.

The likely direct economic impact of TPP on the EU is unclear. Some European observers have worried that lowered tariff barriers among TPP members could lower demand for European goods through trade diversion effects.<sup>87</sup> Others have suggested that TPP could be a 'deadly threat to European exporters of agricultural products in TPP countries'.<sup>88</sup> But more recent studies predict that TPP will not have large income effects for non-members, and even foresee net gains for the European Union.<sup>89</sup> Additionally, any negative trade diversion effects could be mitigated by EU efforts to simultaneously negotiate bilateral trade agreements with TPP member states. In any case, income effects (that is, the expected increase in incomes in Asian countries, some of which would be spent on European products) could also cancel out any negative trade diversion effects.<sup>90</sup>

<sup>87</sup> L. Gajdos, "The Trans-Pacific Partnership and Its Impact on EU Trade," European Parliament, February 2013, p. 24, [http://www.europarl.europa.eu/RegData/etudes/briefing\\_note/join/2013/491479/EXPO-INTA\\_SP%282013%29491479\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491479/EXPO-INTA_SP%282013%29491479_EN.pdf).

<sup>88</sup> P. Messerlin, "The TPP and the EU Policy in East Asia (China Mainland Excluded)," ECIPE, May 2012, [http://www.ecipe.org/app/uploads/2014/12/Messerlin\\_TPP-EU\\_EN05212.pdf](http://www.ecipe.org/app/uploads/2014/12/Messerlin_TPP-EU_EN05212.pdf).

<sup>89</sup> P. A. Petri and M. G. Plummer, "The Economic Effects of the Trans-Pacific Partnership: New Estimates," Peterson Institute for International Economics, January 2016, p. 10-11, [https://piie.com/system/files/documents/wp16-2\\_0.pdf](https://piie.com/system/files/documents/wp16-2_0.pdf).

<sup>90</sup> G. Felbermayr and R. Aichele, The Trans-Pacific Partnership Deal (TPP): What Are the Economic Consequences for In- and Outsiders?, Bertelsmann Stiftung, Gütersloh, 2015, p. 15, [https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Economic\\_Effects\\_of\\_TPP\\_IFO\\_GED.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Economic_Effects_of_TPP_IFO_GED.pdf).

But another potential danger is that investment in Europe will decrease as a consequence of European firms shifting production facilities and distribution entities to TPP countries, to take advantage of any growth it generates and to avoid being put at a competitive disadvantage with respect to higher tariffs facing European products.<sup>91</sup>

An additional concern is that TPP could set global standards that are lower than those in TTIP and in particular set a benchmark for other EU FTAs. In particular, concerns have been raised about the intellectual property right protections in TPP, which some, such as the charity Médecins Sans Frontières, fear could prevent the production of generic medicines in Asian countries.<sup>92</sup> There are also concerns about public procurement and social and environmental standards. Though higher than previous trade agreements with Asian countries, they are lower than European expectations and have already started to affect EU negotiations with Asian countries. A particular concern is the EU-Japan FTA. Indeed, Japan may make fewer concessions to Europe than to the United States – which is, after all, a treaty ally on whom it depends for its security. One particular area of concern may be Japan's attitude toward the EU's new idea of an 'Investment Court System', which is not the basis for dispute resolution between investors and states in the final TPP agreement.

There are also some concerns about the impact of TPP on the TTIP negotiations. These issues are dealt with more fully in the previous chapter.

## 5.2 The strategic impact of TPP

The bigger question for Europeans is whether TPP is in their strategic interests. Given the way that TPP is part of the broader US approach to Asia, the question becomes whether the Obama Administration's 'pivot' is in the European interest. Here, however, things become extremely complicated. Since Europe does not have a shared sense of its broader strategic interests in the region, it becomes difficult to decide whether TPP will help in the pursuit of them. Since TPP and the 'pivot' of which it forms part, is a response to the rise of China and its aspirations for regional hegemony, the underlying question is whether or not it is in the European interest for China to emerge as a regional hegemon – a question about which there has so far been little discussion among Europeans.

Many Europeans think they do not need to take a position on the question of Chinese regional hegemony. In recent years, and especially since the euro crisis began in 2012, they have sought to improve their relationships with countries in the Asia-Pacific region. Primarily they have focused on economic objectives and have tended to see the countries of the region, and above all China, as export markets and sources of investment. Europeans have also increasingly seen an opportunity in China's One Belt, One Road (OBOR) initiative, which China presents as a 'win-win' project.<sup>93</sup> Meanwhile, although Europeans recognise that security and stability is a precondition for the region's continued economic success, they have taken a backseat on security issues in the region.<sup>94</sup>

<sup>91</sup> F. Erixon et al., 2014, p. 7.

<sup>92</sup> See "Trading Away Health: The Trans-Pacific Partnership Agreement (TPP)," Médecins Sans Frontières, 2015, [http://www.msfaccess.org/sites/default/files/IP\\_Brief\\_TPP\\_ENG\\_2015.pdf](http://www.msfaccess.org/sites/default/files/IP_Brief_TPP_ENG_2015.pdf).

<sup>93</sup> On the EU and OBOR, see for example J. Verlare and F. P. Van Der Putten, "'One Belt, One Road' An Opportunity for the EU's Security Strategy," Clingendael, December 2015, [http://www.clingendael.nl/sites/default/files/One\\_belt\\_one\\_road\\_vdPutten\\_Verlare\\_Clingendael\\_policy\\_brief\\_2015.pdf](http://www.clingendael.nl/sites/default/files/One_belt_one_road_vdPutten_Verlare_Clingendael_policy_brief_2015.pdf); N. Casarini, "Is Europe to Benefit from China's Belt and Road Initiative?," Istituto Affari Internazionali, October 17, 2015, <http://www.iai.it/en/pubblicazioni/europe-benefit-chinas-belt-and-road-initiative>; I. Bond, "China's European Charm Offensive: Silk Road or Silk Rope?," Centre for European Reform, November 27, 2015, <http://www.cer.org.uk/insights/chinas-european-charm-offensive-silk-road-or-silk-rope>.

<sup>94</sup> "Guidelines on the EU's Foreign and Security Policy in East Asia," General Secretariat of the European Union, June 15, 2012, [http://eeas.europa.eu/asia/docs/guidelines\\_eu\\_foreign\\_sec\\_pol\\_east\\_asia\\_en.pdf](http://eeas.europa.eu/asia/docs/guidelines_eu_foreign_sec_pol_east_asia_en.pdf).

As Europeans become more dependent on Asia for economic growth, their instinct is to remain 'neutral', or to avoid 'taking sides', in disputes between states in the region and in the emerging strategic competition between China and the United States. The EU has adopted a policy of 'principled neutrality' in the face of revisionist Chinese claims, backed by the deployment of military forces to islets and reefs located in the international waters of the South China Sea or claimed by neighbouring countries.<sup>95</sup> Some argue that, although a conflict in Asia would be disastrous for Europeans in economic terms, there is little that they can or should do about it – in other words, they are 'neutral' by default.<sup>96</sup> Others believe that European integration should embrace the idea of 'neutrality' in Asia. As Javier Solana has put it, that the EU is not a Pacific power and 'does not carry the burden of great power status in Asia' is a 'paradoxical asset'.<sup>97</sup> The EU could therefore function as an inspiration, or even a model for Asia, and Europeans could even play some kind of role in mediating between the parties in disputes about territory and other issues.<sup>98</sup> Either way, the implication is that the European interest is above all in maintaining peace, rather than in preventing Chinese domination of Asia.

The reality is that few in Asia expect Europeans to play a direct military role in any conflict – though the United Kingdom could be involved more than other EU member states because of its intelligence sharing arrangements with Australia and the United States and its security commitment to Australia, Malaysia, New Zealand and Singapore through the Five Power Defence Arrangements. As permanent members of the United Nations Security Council, the UK and France would also inevitably play some role in the event of a military conflict in Asia. But the more significant implication of the idea of European 'neutrality' is that Europeans should avoid taking a diplomatic stand by criticizing one side or another or by actively supporting one side even in non-military terms.

However, because of the sheer size of the EU as a global economic power, Europeans cannot escape the reality that their decisions and actions have political, strategic and other implications. First, a case in point is the EU's embargo on selling arms to China. In the mid-2000s, Europeans dealt with the embargo mainly as an economic matter: although some wanted to lift it, it was not because they wanted to change the military balance in East Asia, but rather because they saw the potential to make money. However, they came under strong pressure from the United States, Japan and other actors in the region, who urged them to take political and security considerations into account in their policy towards the region.

Secondly, if Europeans stand for anything, it is the international rule of law. This means territorial and maritime disputes in Asia should be resolved through international law and in particular, the United Nations Convention on the Law of the Sea (UNCLOS), the key piece of international law that deals with maritime disputes. In other words, even if Europeans want to avoid becoming involved in specific disputes between Asian countries, they must at least take a stand on process. But doing so could, in practice, lead Europeans to take sides on substance. For example, China's claims to the area within the 'Nine-Dash Line' – in other words, almost the entire South China Sea – are based on its view of history rather than UNCLOS or broader international legal norms. Thus, a principled insistence on the rule of law could lead to a confrontation with China.

Thirdly, even if Europeans were prepared to abandon their values, reconcile themselves to a new Sinocentric order in Asia and focus on avoiding a conflict that would threaten their economic interests, 'neutrality' is not necessarily the best way to do so. In fact, inadvertently reassuring China that it can act

<sup>95</sup> Guidelines on the EU's Foreign and Security Policy in East Asia.

<sup>96</sup> Conversations with officials from the EU and member states, 2012-2016.

<sup>97</sup> J. Solana, "Europe's Smart Asian Pivot," Project Syndicate, September 17, 2013, <https://www.project-syndicate.org/commentary/the-eu-s-strategic-advantages-in-asia-by-javier-solana?barrier=true>.

<sup>98</sup> See for example M. Duchâtel and F. Huijskens, "The European Union's Principled Neutrality On The East China Sea," SIPRI, February 2015, <http://books.sipri.org/files/misc/SIPRIPB1502d.pdf>.

aggressively without consequences, could actually make conflict more likely. 'Neutrality' is not even the best way for Europeans to avoid consequences for themselves. Such a policy would have implications for the Atlantic Alliance – the United States would regard such a position of 'neutrality' as a betrayal and/or a sign of weakness and respond accordingly – and for relations with other actors in Asia.

Fourthly, whether they like it or not, Europeans cannot remain indifferent to what is taking place in Asia because of the increasing interconnectivity between European and Asian security. If Europeans want other powers to support them with their own security issues – for example in the eastern neighbourhood – they need to support others with theirs. In particular, Asian countries such as India and Japan have important economic, energy and security relationships with Russia – which are crucial for European security. These relationships create leverage. However, Europeans cannot expect them to use it if Europeans do not also support Asian countries with their own security issues. Highlighting this point, the interconnectedness of security in Asia and Europe has been dramatically illustrated by the ongoing crisis in Ukraine.

Finally, Europeans will simply not be able to remain 'neutral'. Europeans still depend on the United States for security. It is an illusion to think that they could seek to remain 'neutral' in what is likely to be the biggest strategic challenge for the United States in the coming century without consequences for the relationship. An attempt to remain 'neutral' will also have consequences for European relationships with Asian countries. In particular, China is likely to put pressure on Europeans, including through 'divide and conquer' strategies designed to fracture European unity, as well as by creating wedges between Europe and the United States, as seen in the transatlantic split over membership in the AIIIB. EU member states' growing economic dependence on China makes them increasingly vulnerable to being instrumentalised in this way.<sup>99</sup>

Thus 'neutrality' is an unsustainable and ultimately self-defeating position for Europeans to take. They do not have the option of simply 'opting out' of the emerging tensions in Asia and focusing on commercial interests. Instead, they should seek to take a more proactive approach to Asia. This will involve defining more clearly what the European interest is in the region. In some specific cases, this may differ from the American interests. But both powers have broadly similar interests in encouraging China to conform to international law and to discourage it from redrawing borders by force – not least because of the implications for European security. As we have seen, TPP is part of a broader US strategy that seeks to shape Chinese behaviour in precisely this way. Seen from this perspective, TPP is also in the European interest.

### 5.3 The impact of TPP on global governance

Europeans do have one clear interest in Asia, as elsewhere: the promotion of a rules-based order and, in particular, the strengthening of multilateral institutions. In terms of the international trading system, Europeans have an interest in strengthening the WTO – an institution the EU played a central role in helping to create. The problem, however, is that it is not at all clear what effect TPP will have on global governance and, in particular, on the WTO. As we saw in Chapter 5, mega-regional trade deals such as TTIP and TPP are in part a response to the stalling of trade liberalisation talks and are intended as 'building blocks' or 'stepping stones' – a kind of detour towards multilateralism. But these intentions notwithstanding, it is nevertheless possible that they will undermine multilateral institutions such as the WTO.

<sup>99</sup> See H. Kundnani, "How Economic Dependence Could Undermine Europe's Foreign Policy Coherence," The German Marshall Fund of the United States, January 21, 2016, <http://www.gmfus.org/publications/how-economic-dependence-could-undermine-europes-foreign-policy-coherence>.

Historically, agreements outside the framework of the WTO are not a new phenomenon, and indeed the WTO and its predecessor, the General Agreement on Tariffs and Trade, explicitly allow for other trade agreements that promote trade liberalisation, as long as barriers are not raised to third parties. Over the years, hundreds of regional trade agreements (RTAs) have been agreed.<sup>100</sup> It has become commonplace to refer to a 'spaghetti bowl' of such overlapping trade agreements. In this context, mega-regional trade agreements like TPP could actually have a positive effect for multilateral efforts, by tidying up this messy picture. As Richard Baldwin has put it, mega-regional trade agreements could make 'the spaghetti into lasagne plates'.<sup>101</sup>

However, the emergence of mega-regional trade agreements involving some of the biggest global economic powers could also threaten the pre-eminent position of the WTO as the rule-setting institution in the global trading system. This is especially true in areas in which WTO norms and rules have not gone as far as in bilateral and regional agreements – for example, in relation to investment. Although thousands of bilateral investment treaties (BITs) already exist, the fact that the new mega-regionals, which are going to cover vast shares of global foreign direct investment flows, will include investment chapters, likely including some form of investment dispute settlement mechanisms, means that rules in this area are unlikely to be set at the multilateral level of the WTO going forward. The same can be said about other increasingly important trade issues, such as government procurement, labour rights, regulatory coherence, and intellectual property rights.<sup>102</sup>

Much depends on how the WTO as an organisation and its vast membership react to the implementation of mega-regional trade agreements. The failure to reach consensus among all member states during the Doha Round might indicate that 'giant negotiations covering multiple subjects and subscribed by all members must be recognised as yesterday's way of doing business in the WTO'.<sup>103</sup> This is the argument behind the idea of mega-regional trade agreements as 'building blocks' or 'stepping stones' towards multilateralism. On the other hand, giving up on the consensus approach might erode the broad acceptance and legitimacy of the WTO system – particularly if powerful nations such as China reject rules they find disadvantageous.<sup>104</sup> In short, it is difficult to say whether TPP, like TTIP, will strengthen or undermine multilateral institutions.

<sup>100</sup> See World Trade Organization, "Regional Trade Agreements: Facts and Figures," accessed April 29, 2016, [https://www.wto.org/english/tratop\\_e/region\\_e/regfac\\_e.htm](https://www.wto.org/english/tratop_e/region_e/regfac_e.htm).

<sup>101</sup> Baldwin, *The Systemic Impact*, 2014, p. 26.

<sup>102</sup> For an overview of the impact of mega-regionals on the WTO in specific subject areas, see G. C. Hufbauer and C. Cimino-Isaacs, "How Will TPP and TTIP Change the WTO System?," *Journal of International Economic Law* 18, no. 3, 2015.

<sup>103</sup> Hufbauer and Cimino-Isaacs, 2015, p. 4.

<sup>104</sup> Baldwin, *The Systemic Impact*, 2014, p. 26.

## 6 Conclusion

Both TPP and TTIP are mega-regional trade agreements that fill a gap between bilateral FTAs and global multilateral trade liberalisation through the WTO. Both are extremely ambitious enterprises, given their sheer scale and their claims to be 21<sup>st</sup> century economic agreements less concerned with tariff liberalisation than with addressing regulatory differences and the opening of sectors, such as the digital economy and advanced services. Both also promise to be tools of social policy. In fact, the Obama Administration hopes to secure even higher environmental and labour standards in TTIP than it did in TPP.

Both agreements have a geopolitical design. TPP is designed to support a new era of US leadership in Asia at a time when its traditional tools of military alliances and force presence are being challenged by China's assertiveness and growing power. The trans-Pacific pact adds additional glue to the US-Japan alliance, the linchpin of the United States' Asia strategy, by entwining these major economies more closely, after decades in which they fought over trade restrictions, even as they cooperated on security. It unites other US allies like Australia, New Zealand and Singapore, cements the growing partnership between the United States and its old adversary Vietnam, and holds the door open to other core US military allies, like South Korea and the Philippines. President Obama and his senior officials frame TPP as a way to 'write the rules' of trade and investment in the new Asia, rather than allowing China to dominate the region economically.

A central question is whether TTIP itself will advance such a geopolitical design. Although initiated by Europe, it is conceived in the United States as an economic anchor for a transatlantic relationship that has drifted over differences with respect to the Middle East, Russia, governance of the Eurozone and other issues. A true transatlantic marketplace would be a fillip to both the US and European economies, which are beset by stagnant demand, a hangover from the global financial crisis, and are searching for new sources of growth. It would also have the profound geopolitical effect of signalling to China and other emerging, more statist economies that the West still sets the gold standard for trade and investment agreements, along with regulatory convergence, in a way that make the United States and Europe the pacesetters for competitiveness in the 21<sup>st</sup> century world economy. But, if TTIP negotiations are divisive or do not reach final agreement, the quest for a US-European free trade pact could deal further blows to a fragile transatlantic relationship and further incentivise the United States to focus its diplomatic energies on Asia, the source of the world's most dynamic growth markets, and away from allegedly troublesome and cantankerous European allies.

More broadly, TPP and TTIP could help globalisation, and the unprecedented prosperity it has produced, not just for the West but for the world, continue to move forward rather than going into reverse. For the past two years, international trade has grown more slowly than the global economy, signalling a reversal of the entire post-Cold War period when trade growth outpaced economic expansion. Voters in the United States are growing increasingly protectionist, judging by the strong support across the country for anti-free trade candidates like Donald Trump and Bernard Sanders. The European Union risks fracturing over 'Brexit', with British public opinion driven in part by a sense that continental Europe is an economic deadweight on what would otherwise be a vigorous, free-trading, independent United Kingdom. The refugee crisis in Europe, as well as the chronic weakness of EU economies like Greece, risk creating a further populist backlash against the kind of cosmopolitan openness that views free trade confidently as an opportunity to deepen prosperity.

Even more than China, whose leaders and companies are shifting their economic focus to its vast domestic market after decades pursuing an export-led growth model, Europe is the world's principal trading economy, being far more exposed to foreign markets than the United States and Japan are. The European Union arguably has the most to lose from protectionist currents swirling among Western

publics – and the most to gain from a new round of global trade liberalisation. Such a prospect could be enabled by implementation of the mega-regional TPP and TTIP agreements. If their enactment incentivised China, India and other major economies to pursue competitive liberalisation, the trans-Pacific and transatlantic trade pacts could create a broad foundation for a new, multilateral agreement at the WTO to widen their benefits to the rest of the world's trading economies. Even if they did not, enactment of TPP and TTIP would put the United States and Europe firmly in the driver's seat of high-standard trade and investment liberalisation, positioning them well to compete with, and mutually prosper from, the giant Asian economies that are relentlessly shifting global economic power to the East.

## 7 Recommendations

Whether TPP is ratified or not will have little to do with Europeans. There is also little they can do shape the agreement itself. To some extent, therefore, Europeans will have to take a 'wait and see' approach' to TPP. Nevertheless, there are several aspects of TPP to which Europeans should pay particular attention – and a number of ways in which they could seek to maximise potential benefits and mitigate potential negative consequences from TPP. In particular, the EU should:

### **Ensure TTIP is compatible with TPP**

From the perspective of the EU, TTIP is the agreement that will set the trade rules for the 21<sup>st</sup> century and shape global standards for the future. TPP is often perceived in Europe to be less ambitious in this regard. Yet, while TTIP negotiations may indeed go beyond the level of ambition of TPP in a number of technical areas, the latter covers the economic region of the future. To achieve the desired global standard-setting effects of TTIP, European policymakers should therefore ensure that the transatlantic agreement is as compatible with TPP provisions as possible and at the least not contradict them.

### **Ensure consistency in bilateral trade agreements with Asia-Pacific countries**

The fact that the Asia-Pacific economic region is characterized by a growing network of global supply chains increases the importance of TPP as a mega-regional agreement. The EU thus far has taken a bilateral approach towards trade agreements in Asia by negotiating FTAs with individual countries. Despite the recent conclusion of an agreement with Vietnam and ongoing negotiations with Japan and other Asian countries, the EU risks falling behind further as an actor shaping trade and investment relations in this region. It will therefore be important for European policy makers to strengthen efforts to increase consistency among the bilateral trade EU-trade agreements in the region, in order to continue to benefit from regional production chains.

### **Define the European interest in Asia**

Because, as we have seen, Europeans do not have a shared sense of what their strategic interests are in the Asia-Pacific region, it is difficult to develop a common position on how TPP fits in with objectives beyond trade liberalisation. In recent years, Europeans have begun to go further in developing a shared vision of their goals around the world and of how to achieve them. The High Representative for Foreign and Security Policy is currently developing a 'global strategy', which will be published later this year. But there remains a long way to go – especially in relation to Asia. In particular, Europeans should develop a clearer sense of the role of trade in the context of their broader strategic interests in Asia. They should develop a clearer sense of how to balance their interest in trade liberalisation as an end in itself with the need to use trade as a tool in the pursuit of other strategic objectives in the region – as the United States is seeking to do through TPP.

### **Be attentive to the impact of TPP (and TTIP) on the prospects for global trade liberalisation through the WTO**

One clear interest that Europeans have is strengthening the rules-based order and multilateral institutions. It is not yet clear whether 'mega-regional' trade deals such as TPP will function as 'building blocks' or 'stepping stones' towards further progress in multilateral trade liberalisation, or whether they will undermine multilateral institutions such as the WTO. The EU therefore should pay particular attention to this issue and work closely with the WTO to ensure its continued relevance. It should be prepared to change course if evidence emerges that 'mega-regional' trade deals such as TPP are undermining the WTO. At the same time, a strong argument in favour of moving forward with TTIP is that its enactment, alongside that of TPP, could create a broad-based, multi-regional foundation for a new round of global trade liberalisation through the WTO that might otherwise be absent, stymieing further multilateral trade opening at the global level. In the absence of progress in the WTO, mega-regional deals like TPP and TTIP may be preferable to smaller bilateral arrangements, and could set the stage for a new round of WTO-led global trade liberalisation.

## 8 List of Abbreviations

<b>AIIB</b>	Asian Infrastructure Investment Bank
<b>APEC</b>	Asia Pacific Economic Cooperation Forum
<b>APT</b>	Association of Southeast Asian Nations Plus Three
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>EAS</b>	East Asia Summit
<b>EPA</b>	Economic Partnership Agreements
<b>FTA</b>	Free trade agreement
<b>FTAAP</b>	Free Trade Area of the Asia-Pacific
<b>GMO</b>	Genetically modified organism
<b>HLWG</b>	High-Level Working Group on Jobs and Growth
<b>ICS</b>	Investor Court System
<b>ILO</b>	International Labour Organization
<b>IP</b>	Intellectual property
<b>ISDS</b>	Investor-state dispute settlement
<b>KORUS</b>	Korea-US Free Trade Agreement
<b>MERCOSUR</b>	Southern Common Market
<b>NAFTA</b>	North American Free Trade Agreement
<b>NDB</b>	New Development Bank
<b>NTA</b>	New Transatlantic Agenda
<b>NTB</b>	Non-trade barrier
<b>OBOR</b>	One Belt, One Road
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>RCEP</b>	Regional Comprehensive Economic Partnership
<b>RTA</b>	Regional trade agreement
<b>SME</b>	Small and medium-sized enterprise
<b>SOE</b>	State-owned enterprise
<b>SPS</b>	Sanitary and phytosanitary
<b>TAFTA</b>	Transatlantic free trade area
<b>TEC</b>	Transatlantic Economic Council
<b>TEP</b>	Transatlantic Economic Partnership
<b>TPA</b>	Trade Promotion Authority

<b>TPP</b>	Trans-Pacific Partnership
<b>TTIP</b>	Transatlantic Trade and Investment Partnership
<b>UN</b>	United Nations
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>WTO</b>	World Trade Organization

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