



ANALYSIS

Exploring new trade frontiers

The Political
Economy of
the Trans-Pacific
Partnership



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Introduction

The TransPacific Partnership (TPP) is one of two current mega-regional initiatives that could jointly be the most consequential development in the trading system since the end of the Uruguay Round in 1994. Together with the Transatlantic Trade and Investment Partnership (TTIP) negotiations that are still underway between the United States and the European Union, this agreement could redefine the landscape of the international trading system. The focus of this analysis is primarily upon the TPP, but where appropriate reference is made as well to the TTIP.

The TPP negotiations concluded on October 5, 2015, the text of the agreement was released exactly one month later, and the agreement was formally signed on February 4, 2016. This marked the culmination of a decade-long process of negotiation. The TPP negotiations began in 2005 as a relatively modest initiative bringing together Chile, Brunei, New Zealand, and Singapore. The scope of the negotiations expanded greatly when the world's largest economy (the United States) joined in 2008, followed by the third-largest (Japan) in 2013. Others that came to the table during 2008-2013 include another two developed countries (Australia and Canada) and four developing countries in Latin America (Mexico and Peru) and Asia (Malaysia and Vietnam). The TPP could grow larger still, with the most frequently mentioned candidates being Colombia, Costa Rica, Panama, the Philippines, the Republic of Korea, and Taiwan Province of China. China too is sometimes mentioned as a potential TPP participant but, as discussed at greater length below, that is a matter on which current TPP countries hold decidedly different views.

There is no doubt that the TPP is large and, if it is approved and implemented, the agreement will have a huge impact on the trading system. The TPP's significance can be measured in the collective size of the twelve participating economies and their shares of global trade, as well as in the range of other countries that may seek to join; in the width and depth of the issues that it covers, as well as the precedents that these might set for other regional, plurilateral, and multilateral agreements; and in the context in which the agreement has been negotiated. That context is marked by a global policymaking environment in which countries demonstrate widely differing degrees of willingness to engage in new trade agreements, there are growing doubts regarding the ability of the World Trade Organization (WTO) to execute its legislative function, and regional trade arrangements

(RTAs) such as the TPP have grown greatly in number, magnitude, and significance.

The qualifier noted above — *if* the agreement is approved and implemented — is more important for this agreement than for most others. It cannot be taken for granted that the TPP countries as a group, and especially not the largest among them, will inevitably approve what their negotiators have signed. The TPP is the most controversial trade agreement to be sent to the U.S. Congress since the North American Free Trade Agreement (NAFTA) in 1992-1993. Just like NAFTA, this agreement has become a high-profile issue in a U.S. presidential election. It is too early to know whether the TPP case will also resemble NAFTA in its *denouement*, with the winner of the 2016 presidential election ultimately securing congressional approval for the agreement. There is a possibility that this could be the first major trade agreement to be rejected by Congress since it balked at a pair of non-tariff agreements that were concluded in the Kennedy Round of multilateral trade negotiations (1962-1967). And even if Congress ultimately gives its consent, this agreement could — like others in recent years — be subject to a lengthy ratification process in which demands are made for the renegotiation of specific provisions.

A. QUESTIONS CONCERNING THE TPP

The principal objective of the present study is to place the TPP in its larger political and economic context, and to define — but not definitively answer — the questions that arise concerning its impact on the trading system. The main focus here is on one overarching question and two subsidiary questions.

The overall question addressed here is, "What implications does the TPP hold for the evolution of the international trading system?" That system incorporates not just the multilateral agreements of the WTO, but also the larger body of trade law that includes *inter alia* bilateral and regional RTAs, plurilateral agreements, and other treaties and institutions. The evolution of that system is of interest to all countries no matter what their levels of economic development, trade strategies, or relationship to the TPP. Both of the subsidiary questions speak to important aspects of that overarching question.

The first of these subsidiary questions is, “What does the TPP imply for the multilateral trading system?” There are two very distinct perspectives on how the negotiation of this agreement might affect the observed loss of momentum in the WTO and the apparent (but still contested) demise of the Doha Round of multilateral trade negotiations.

From one perspective, the TPP may be seen as part of the larger problem facing the trading system. The agreement is only the latest and largest demonstration of the divisions within the system. It may be argued that the world is increasingly being divided between the countries that are eager to reach new agreements and the countries that take a more cautious approach, and to the extent that the more eager countries shift their attention to RTAs they may be giving up on the multilateral system. RTA negotiations have grown both in number and in magnitude over the course of the WTO period. Reconciling these negotiations with multilateralism is arguably the greatest challenge for the WTO membership, and the future of the trading system depends to a great degree on how that challenge is met.

Two alternative views see RTAs in general and the TPP in particular in a more positive light. One of them suggests that RTAs are “regional public goods” for which the positive benefits accruing to the participants greatly outweigh the negative effects on third parties, and that the cumulative effect of numerous RTAs may ultimately be as positive as a strengthened multilateral system. Another view holds that RTAs may serve both to set new precedents for the WTO and to encourage countries to redouble their efforts to conclude multilateral negotiations. In this sense, the TPP could be a stepping stone on the path towards reinvigorating the WTO as a global public good.

The second of the subsidiary questions addressed in this analysis is, “What does the TPP imply for the role of the United States in the international trading system?” One of the main challenges in that system is the global diffusion of economic and political power. The multilateral system depended critically upon U.S. leadership in the first several decades following the Second World War, but over time the growth of other powers in the developed and the developing worlds has changed both the trading system and the role that the United States plays in it. The TPP and TTIP can be seen as a U.S. response to this shift, but what exactly does this portend for U.S. policy in the near and long terms?

This subsidiary question may in turn be broken down into two smaller questions. First, will the TPP actually be approved by the U.S. Congress, and (if so) when? The widening partisan divisions over trade policy have made it increasingly difficult for U.S. presidents to make credible commitments to their foreign partners in trade negotiations. President Obama (or his successor) enjoys one procedural advantage: Congress made a new grant of trade promotion authority (TPA) in 2015, providing a tool that will facilitate the approval of the implementing legislation for the TPP. There remains great uncertainty, however, as to just when that implementing legislation will be submitted to Congress for its approval, and what the outcome of the process will be. That uncertainty relates both to the specific circumstances of this year (i.e., we are now in the middle of a presidential election year and the incumbent president is a “lame duck” who cannot be reelected), and also to the longer-term trends in the domestic politics of U.S. trade policy. Those politics have become more partisan and divisive, and the shortcomings of the TPA process are now more apparent than they had once seemed. It is possible that the 2016 presidential election will bring lasting changes in the domestic politics of U.S. trade policy, where the Republican Party is now witnessing a resurgence of protectionist sentiment in its base. The end result is uncertainty not just over whether the TPP might be approved in the remaining months of President Obama’s mandate, but also over who will be his successor and what that person’s plans for the TPP may be.

Another question for U.S. policy is whether the TPP offers the strongest evidence to date that foreign policy considerations have been reintroduced into U.S. trade policymaking. It might even be argued that trade policy has returned to its earlier status as “the hand-maiden of foreign policy.” Or to pose the question more precisely, can this agreement be seen as a manifestation of the growing rivalry between the United States and China? If so, will that rivalry make the United States more reluctant to reach any future agreements to which China will be a party (e.g., in the WTO)? And what might all of this mean for other U.S. trading partners?

The paper does not attempt to provide definitive answers to any of these questions, but will instead seek to stimulate discussion. It does so by specifying each of these questions in greater detail, discussing their significance, and providing evidence and arguments on each side of the issue.

The remainder of this introductory section provides further texture on the “big picture” in which the TPP may be found, including the harsh environment for trade agreements and different views on whether the TPP will help or hinder the maintenance of an open trading system. In Part II we elaborate upon the questions concerning the implications of the TPP for the international trading system, and in Part III we examine the implications of this agreement, as well as its ratification debate, for the trade policy of the United States.

B. TRADE AGREEMENTS IN A TIME OF UNCERTAINTY

It must be stressed that this analysis does not start from the assumption that the TPP will inevitably survive the process by which its members must ratify and implement the pact. Quite to the contrary, it is important to acknowledge that we live in an era when the mortality rate of trade negotiations is unusually high. Some of the more significant negotiations that countries have launched since the end of the Uruguay Round have either failed to reach a successful conclusion or, after being solved at the international level, have fallen victim to the ratification process in one or more of the member states. There are already signs that the TPP faces significant opposition in some countries, not least of them being the largest of the twelve partners. There is a possibility that if this analysis were being written in some future year its core question would be restated as follows: “What does the defeat of the TPP imply for the international trading system, and for the role of the United States in that system?” It is as yet too early to say with real confidence just how strong that possibility is, but it would be foolish to assume it away altogether.

The ill-fated Free Trade Area of the Americas (FTAA) and the free trade pact planned in the Asia Pacific Economic Cooperation (APEC) forum are the most important examples of failed mega-regionals in the post-Uruguay Round era. Both of these negotiations were launched in 1994 with the aim of establishing free trade across wide geographic expanses. Over the ensuing years they each encountered internal problems and fragmented into smaller initiatives, with many of the partners in the Americas and the Pacific Basin negotiating separate agreements with one another. Significantly, the TPP may be said to have evolved out of both of those unhappy experiences

with mega-regional negotiations. Other negotiations that have gone bad over the past two decades include the Multilateral Agreement on Investment that was attempted within the Organization for Economic Cooperation and Development in the late 1990s, and several of the free trade agreements (FTAs) that the United States began to negotiate during the G. W. Bush administration but then collapsed before the 2002 grant of TPA expired in 2007. The Doha Round in the WTO — which has now missed the original 2005 deadline by more than a decade — also appears to have joined the list of failed negotiations, even if WTO members disagree sharply on whether this apparent fact ought to be acknowledged explicitly.

There have also been notable agreements in recent years that were concluded at the international level, but then either failed altogether in the domestic ratification process or faced much deeper and prolonged opposition than had been anticipated. The Anti-Counterfeiting Trade Agreement (ACTA), for example, was supposed to provide for stricter standards than the WTO’s Agreement on Trade-Related Intellectual Property Rights. There were ten signatories to that pact, but ACTA died after the European Parliament voted it down in 2012. The recent experience with trade agreements in the United States has been somewhat more nuanced. It has been decades since Congress refused to approve a trade agreement submitted to it, but there are several recent examples of agreements that legislators have forced into renegotiation and/or made subject to lengthy delays in the approval process; these experiences are described in Part III.

It would be short-sighted to see each of these developments as isolated events, as they are instead manifestations of a changed global environment. We are no longer living in those headier days when the Uruguay Round was completed, which were marked by optimism at three levels: The end of the Cold War made countries feel more secure and ready to cash in their “peace dividend” by (among other things) creating the WTO, there was widespread support for open markets at the intellectual level (i.e., the so-called Washington Consensus), and a fairly robust global economy reduced anxieties over the potentially negative consequences that might come from reducing trade barriers. Each of those fillips to the trading system has since disappeared. The Cold War has been replaced by the War on Terror, a growing Sino-American rivalry, and the reemergence of tensions in the Russo-American relationship; the

developing world is deeply divided between the trade enthusiasts and the trade skeptics; and we are still feeling the after-effects of the Great Recession of 2008-2009. The environment in which the Doha Round was launched in 2001 was already less auspicious than the one in which the Uruguay Round was concluded in 1994, and the events of the ensuing fifteen years have done little to improve the prospects of “getting to yes” in the multilateral negotiations.

As summarized in Table I.1, there are four important trends in the world today that affect both the trading system as a whole and the position of the United States within it. The first and most significant of these is an acceleration in the rate at which income is being redistributed, but the direction and effects of that redistribution are divergent: While income is becoming less concentrated among countries, it is becoming more concentrated within the largest country. This can be a doubly destabilizing process, insofar as it requires a rebalancing of the burdens of leadership at the very time that internal disagreements over the wisdom of open markets makes it more difficult for the

United States to take a leading position. Those internal disagreements over the most traditional of trade issues (i.e., market access) are not nearly as wide as the gulf that separates the parties in the United States over newer issues in trade policy, insofar as issues such as labor rights and the environment relate more directly to the divisions between Democrats and Republicans. Debates over new issues are also divisive at the international level, and are one reason why RTAs have proliferated. Despite the internal disagreements over these topics, one of the main reasons that the United States negotiates RTAs is to work around the opposition to these topics in the WTO. Considerations of foreign policy provide another motivator for the negotiation of RTAs, and in this context the TPP may be seen as a U.S. effort to shore up its position vis à vis China in Asia. Most of the other TPP countries have a very different view on their relations with China, having already negotiated RTAs of their own with that country, but this is only one of many conflicts over the meaning and significance of this mega-regional agreement.

Table I.1: Trends in the International and Domestic Political Economy of Trade Policy

	Changes Since the Late GATT Period	Impact on the Trading System	Impact on United States Trade Politics
Redistribution of Economic Power	The rate of redistribution in shares of global GDP has been far more rapid since 1995 than it was during the GATT period, most notably in the rise of China and other emerging economies and in the relative decline of the major developed countries.	The rapid shifts in the distribution of global economic power, coupled with the WTO’s near-universal membership and the democratization of its procedures, has posed greater challenges for governance than the GATT faced.	Rising inequality in income distribution has inspired defensive protectionism (i.e., opposition to trade agreements with developing countries) but thus far not much offensive protectionism (i.e., demands for new and higher barriers).
Expanding Scope of Issues in Trade Policy	The Uruguay Round took on new issues such as services and intellectual property, but WTO members are divided over the Singapore Issues (except trade facilitation) or other topics such as labor rights and the environment.	The wider range of issues on the table makes trade agreements more complicated to negotiate, and promotes more and deeper RTAs by encouraging countries to seek “coalitions of the willing” outside of the WTO.	Some new issues (e.g., environment, labor, drug patents) are inherently more partisan than were traditional trade topics, and divide Democrats and Republicans more than traditional debates over free trade vs. protectionism.
Proliferation of Regional Trade Arrangements	Very few RTAs were negotiated during the 1940s-1970s, but the pace picked up during the Uruguay Round. It is even faster now, and includes North-North and mega-regional negotiations (e.g., TPP and TTIP).	In a circular process, the failures in the WTO encourage countries to negotiate RTAs, the proliferation of which further undermines the capacity of the WTO to fulfill its legislative function.	RTAs with specific countries and regions highlight political issues associated with the partners, and may either facilitate congressional approval or (more often) exacerbate partisan divides.
Growing Sino-American Rivalry	China pursued an essentially autarchic economic strategy for much of the GATT period, and was outside of that agreement, but acceded to the WTO in 2001 and is now the world’s second largest economy.	China is active in both the WTO and in RTAs. Many countries have reached or are negotiating RTAs with China; the European Union and the United States are notable exceptions.	Members of both parties see China as a rival, and the congressional treatment of any trade initiative (TPP, Doha Round, changes to U.S. laws, etc.) will be affected by the perception of how it affects China.

The debates over ratification may be challenging in several of the member states, but the debate could be especially difficult and consequential in the United States. As suggested above, the outcome will depend to no small degree on the trajectory of the 2016 presidential election, a process that (as of this writing) is still in the candidate-selection phase. No matter which candidates receive their respective parties' nominations, and who wins the general election, there is no doubt that the TPP already faces opposition in some quarters. This is a point to which we will return in Part III, when we take up the question of whether, when, and on what terms the TPP might be approved by the U.S. Congress. That approval may be complicated by the fact that the first two trends summarized in Table I.1 tend to work against approval of the TPP by worsening the partisan divide between Democrats and Republicans. The same may also be true for the third trend, to the extent that irritants in relations with a few of the TPP partners may offer ammunition to the agreement's opponents. It is only the fourth trend that bolsters support for the agreement, to the extent that any initiative that is seen as shoring up the U.S. position *vis à vis* China may attract support from members of both parties.

C. THE TRADING SYSTEM AS A PUBLIC GOOD

To pose the question at the highest level of abstraction, what is at issue is whether and how the world will continue to provide for itself the public good of open and non-discriminatory markets. It has often been argued that the more or less open trading system that operated in the second half of the 20th century owed its existence to U.S. leadership, but the relative economic decline of the United States has put in jeopardy that country's influence and (arguably) the stability of the system as well. The question then becomes which of three scenarios will now emerge. One is a pessimistic outcome in which the WTO becomes ever less relevant, the trading system becomes more fragmented, and RTAs such as the TPP may even begin to act more like rival blocs than as building blocks. This is to be contrasted with two more optimistic scenarios in which the TPP and other agreements play a more positive role. In one of them the open trading system is treated as a global public good, with RTAs allowing countries to make a "down payment" on liberalization that they may later multilateralize in the WTO. Another and somewhat different scenario would see a transition from global to

regional public goods, with separate agreements such as the TPP collectively resulting in a system that is more difficult to navigate but may ultimately take us to approximately the same destination. All three of these scenarios can be understood as different takes on the problem of public goods and free riders.

As first described by Paul Samuelson in 1954, public goods share two special characteristics: They are non-excludable (i.e. no one can be prevented from enjoying them) and are non-rivalrous in consumption (i.e., any one person's use of that good does not diminish its availability to others). These features are common to such diverse desiderata as sidewalks, technological advances, and global governance. A third characteristic shared by most public goods is that they may be underprovided. This is a market failure that can be traced to the free-rider problem, in which a rational, self-interested actor will normally perceive a great disincentive to supply a public good if he anticipates that other, equally rational and self-interested actors will simply "free ride" on that investment. Simply stated, a public good might never be provided if everyone waits for everyone else to supply it. At the domestic level, this barrier to the provision of public goods by private parties becomes a rationale for the state to step in as a provider, acting on behalf of the community by building roads, providing for national defense, etc. The same logic can be applied at the international level, but the absence of anything like world government makes this solution more difficult than it is at the domestic level.

There are two possible solutions to the global free-rider problem. Either a uniquely powerful country steps in to provide the public good (as posited in the theory of hegemonic stability) or this task can be accomplished through a more democratic approach to global governance (as advocated by the proponents of global or regional public goods). These contrasting schools of thought each start from the propositions that an open trading system is desirable, that it has the characteristics of a public good, and that it has been historically underprovided. Where they differ is in their expectations of whether the world might continue to move towards a more open market at a time when the global distribution of economic and political power is becoming more diffuse. Where the theory of hegemonic stability sees that diffusion as a challenge or even a threat, the advocates of global or regional public goods see it as an opportunity.

The theory of hegemonic stability first emerged in the 1970s as a way of explaining why global markets are often closed but are sometimes more open. This is a power-centric conception of the global trading system, and one that stresses the vital role of a hegemon — that is, a politically powerful and economically efficient country that has both the means and the motivation to establish an open trading system. Markets were more open, or were progressing in that direction, when Great Britain and the United States,¹ respectively, were each at the height of their competitiveness and exercised their leadership. Conversely, markets were more closed in the unhappy period that came between British and American hegemony. According to this theory, it is no mere coincidence that the creation of the GATT in 1947 came when the United States had the most competitive economy, the largest military power, and the greatest political influence. Those who adhere to this view take a pessimistic view of the system as it now stands, in which the United States no longer plays the leadership role that it did in past generations. From this perspective, the glacial pace of progress in the Doha Round and the proliferation of RTAs are both symptomatic of a leaderless system in which liberalization and multilateralism are being replaced by discrimination and balkanization. In this sense, the TPP may be seen as a manifestation of the hegemon's decline.

There is a similarity in the trajectories that the trading system followed during the U.K. and U.S. hegemonies, with each going through a comparable evolution in the way they structured their trade agreements. The treaties that the British started to negotiate in 1860, and the tariff-reduction agreement the United States began pursuing in 1934, each included MFN clauses that formed the foundation of the multilateral system in their day. Both systems remained stable for decades, but each of these hegemonies later turned to discriminatory alternatives as their competitiveness declined. Beginning in the late 19th century and culminating in the restrictive imperial preferences negotiated at the Ottawa Conference in 1932, Britain went from negotiating bilateral agreements on a non-discriminatory basis to favoring discriminatory agreements among Commonwealth members. The United States began to negotiate discriminatory agreements when there were serious doubts over the country's competitive position *vis à vis* Japan, with the launch of the first FTA negotiations — with Israel in 1984 and Canada in 1986 — coinciding with the height of these U.S. anxieties. The main difference between

those first FTAs and the TPP, according to this line of reasoning, is in the changing U.S. views of Japan and China. Japan has gone from being the principal rival to a weakened partner, whereas China competes with the United States not just in the economic sphere but also in political and security issues. Seen in that context, the proliferation of RTAs in general and the negotiation of the TPP in particular offer evidence that the United States is shifting away from traditional leadership role in the multilateral system to a posture that is more regional.

The advocates of global public goods believe that open markets and other *desiderata* can be provided and maintained through collective effort. Compared to the theorists of hegemonic stability, the advocates of this position have a conception of international relations that is more democratic and less power-oriented, arguing that global institutions have a positive function to perform and that they do not owe their existence solely to the interests of the most powerful country. Nearly all countries are now either members or applicants to the WTO, and the fact that many of them wish to go farther still through the negotiation of RTAs may be taken as a positive sign. These advocates contend that institutions such as the WTO need to be strengthened in order to deal with the world's problems, and thus provide a more enduring, equitable, and cooperative basis for democratic global governance than reliance on hegemony.

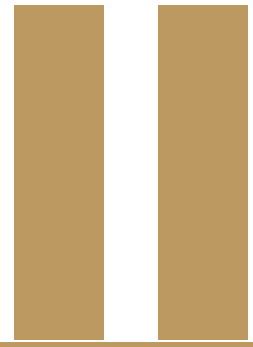
The question then becomes how the progress made in the TPP and in other RTAs might be incorporated into the international trading system. For multilateralists, the best option would be to replicate the diplomatic sleight-of-hand by which the Information Technology Agreement was initially negotiated outside of the WTO but was then brought within its fold. It is possible that elements now found in the TPP, or in other RTAs such as TTIP, might similarly be brought to the WTO. They might thus provide templates for new agreements that might be adopted by the WTO membership as a whole, or at least by a critical mass of those members (e.g., in plurilateral agreements under the WTO umbrella). That could prove to be a much more difficult proposition in actual practice than it may sound in principle, however, at a time when there are deep divisions within the WTO over the status of the Doha Round and the advisability of conducting negotiations that are plurilateral and/or outside the scope of the single undertaking.

If the RTAs cannot complement the legislative function of the WTO, they might instead provide a substitute for it. Whether or not they explicitly intend it, countries appear to be conducting their most important negotiations exclusively by way of RTAs. Those RTAs need not be considered restrictive blocs, but may instead provide regional public goods that collectively amount to a something approximating a multilateral system. To the extent that some countries are excluded from these agreements, the RTAs might be considered what economists call a “club good.” This is a hybrid between ordinary private goods (which typically are excludable) and the special case of public goods (which are not excludable). In the case of club goods, the degree of excludability is negotiable. This might be compared to paid entry into a movie theatre: One person’s enjoyment of the film does not prevent another from also seeing it, but both of them must pay to enter and no one is allowed to sneak into the theatre. In much the same way, the benefits of RTAs can be spread — for a price — to any country that is willing either to accede to the existing agreements or to negotiate new ones. Excludable club goods may be a second-best alternative to a functional multilateral system, and their establishment can entail significant transaction costs (especially by way of negotiations that might stretch out for years), but they are better than no new agreements at all.

The TPP might variously be seen in any one of three ways, depending on how one conceives of public goods. It might be the latest evidence of the hegemon’s decline and a warning sign that the global economy is becoming more fragmented, or as a positive sign that the countries that are willing to negotiate are prepared to set precedents for the multilateral system, or that those countries are devising a new system that leaves all countries free to decide whether they want to pay the costs and reap the benefits of a generally open trading system. Which of these different takes on the public-goods problem is the most accurate? Or to be more precise, which of them best predicts where the system as a whole is headed, and what role the

TPP may play in taking us there? That is obviously a question that cannot be definitively answered in the here and now, as we lack the necessary historical perspective on where we are headed. One can only hope that when some future historian looks back on the decisions being made in our own time, that person will be able to explain how it was that we managed to secure the benefits of an open market through either global or regional public goods. The danger is that such an expectation might represent the triumph of hope over experience. If so, it would be unwise and unwarranted to dismiss the possibility that we are now in a transitional period towards a trading system that is more discriminatory and perhaps less open, power may matter at least as much as the rule of law, and the role of the WTO is reduced to conducting trade policy reviews, administering the existing agreements, and adjudicating disputes that arise over these agreements. This is certainly not what the statesmen who initiated and completed the TPP had in mind; we may take them at their word that they would prefer progress at both the regional and the multilateral levels. The actual consequences of an international agreement can nevertheless deviate from its intent, as was demonstrated (for example) by the disarmament agreements that were reached between the two world wars. It is possible that the TPP could actually hasten the marginalization of multilateral rules and institutions.

We cannot know whether that hypothetical historian of the future will be able to identify the TPP as part of the solution or part of the problem. We cannot even say with any certainty whether the great efforts that went into negotiating the agreement will prove to be all for naught, as it is by no means clear whether or when the agreement will be approved. In lieu of providing anything like definitive answers to questions that are posed at such a high level of abstraction, the remainder of this analysis will aim instead to clarify the nature of the questions. We will do so first by examining in greater detail where the TPP fits in the international trading system, and then turn more specifically to its place in U.S. trade policy.



**Implications of
the Trans-Pacific
Partnership for
the Trading
System**

What does the TPP imply for the trading system? To answer that question we may start by drawing a distinction between the *multilateral* trading system, which was once centered on the General Agreement on Tariffs and Trade (GATT) and today on the WTO, and the *international* trading system as a whole. The multilateral trading system is at the center of the international system, and at its absolute center is the WTO, but the broader system also encompasses the numerous bilateral, regional, and plurilateral agreements that countries reach. When the WTO came into being it had appeared that the new, multilateral institution would be the most dynamic part of the trading system, having replaced the imperfect, incomplete, and provisional GATT with a permanent and *bona fide* international organization. There were solid reasons to believe this: At the inauguration of the WTO era all but a handful of countries were either members or in some stage of the accession process, the scope of issues covered by WTO agreements was so much wider than those that had been governed by the goods-centric GATT, and the new dispute-settlement provisions were far stronger than their GATT predecessor. The millennium, it would seem, had quite nearly been achieved.

Those expectations proved to be overblown, as demonstrated both by the repeated failures in the Doha Round as well as by the great proliferation of RTAs. The great irony of the WTO's establishment is that it culminated a half-century of progress towards a comprehensive and multilateral trade regime, but came just when major subsets of its members began negotiating discriminatory agreements in earnest. The Uruguay Round may have created unrealistic expectations, having been negotiated in a very special historical moment and coming closer to achieving an ideal outcome than any of the previous GATT rounds. By comparison, the Doha Round started with fewer new ambitions, dropped most of those within a few years, and got bogged down early.

While countries have periodically tried to break that stalemate, there is a widespread sense that all the round lacks is a definitive death certificate. Paragraph 30 of the Nairobi Ministerial Declaration (2015) acknowledged, but did not seek to reconcile, the differing views of the membership on the status of the Doha Round. The Declaration "recognize[d] that many Members reaffirm the Doha Development Agenda ... reaffirm their full commitment to conclude the" round, but that "[o]ther Members do not reaffirm

the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations."² It might be argued that while this deliberately ambivalent language did not constitute a death certificate for the round, it did amount to a missing person's report for someone we never expect to see return.

The challenges that the multilateral system faces are obvious, but what is much less clear is whether RTAs form a part of the solution, are a symptom of the problem, or may even be a root cause of the system's troubles. Many observers fear that the proliferation of RTAs, and especially the mega-regionals, may contribute to a balkanization of the trading system, the multiplication of competing rules of origin, and the creation of national constituencies that are more interested in preserving the existing preferential arrangements than in promoting new global deals. Others see RTAs as a positive sign that many countries remain eager to achieve further liberalization by whatever means may be necessary, and hope to set baselines for future progress in the WTO.

A. MULTILATERALISM AND REGIONALISM IN THE TRADING SYSTEM

The multilateral trading system has long sought to achieve three objectives: the reduction or elimination of trade barriers, an end to discrimination between trading partners, and the universal application of these rules to all countries. The WTO may be nominally achieving the third of those objectives, now that nearly every country in the world is either a member or is actively negotiating for its accession, but the proliferation of RTAs implies that some countries are willing to sacrifice that second objective (i.e., non-discrimination) in order to achieve greater progress on the first (i.e., liberalization). What we are increasingly seeing is a tension between a multilateral system in which membership is universal but new MFN liberalization is elusive, and a loose network of RTAs that is growing both in size and in scope, but in which only some countries participate while others remain on the side-lines.

There is nothing new about this ambivalence towards discrimination within a multilateral construct, as it has been present since the very creation of that system. In principle, the preference for non-discrimination is clear: The preambles of both the GATT and the WTO

each called for “the substantial reduction of tariffs and other barriers to trade and ... the elimination of discriminatory treatment.” On a more substantive level, however, at the same time that the original GATT negotiators enshrined universal and unconditional MFN treatment as the core principle of the GATT (i.e., Article I) they also permitted the negotiation of discriminatory agreements. GATT Article XXIV allows free trade agreements and customs unions, and since 1979 this loophole has been supplemented by the Decision on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries. That latter agreement, which is more commonly called the “Enabling Clause,” facilitated the negotiation of RTAs among developing countries by applying less stringent rules to South-South agreements.

It has long been a tradition for WTO members to be troubled in principle by all other countries’ RTAs, but in practice to be even more strongly committed to protecting their own RTAs. The result has been the creation of a system that requires the notification and examination of these agreements, and also imposes certain standards that the agreements are required to meet, but these standards are vague and there has never been any serious effort made to ensure that they are rigorously enforced. An RTA is required to cover “substantially all of the trade” between the countries that conclude it, for example, but there is no consensus on what constitutes “substantially all.” The result has been a system in which agreements are (usually) notified, and (slowly) examined, but never with any credible threat that they might be found not to meet the legal obligations established in GATT Article XXIV.

The significance of the problem varies according to the actual number of magnitude of the agreements that get negotiated. RTAs had represented occasional exceptions to the general rule of multilateralism during most of the GATT period, but since the mid-1990s they have seemed to be more the rule than the exception. The data in Table II.1 show how quickly RTAs have proliferated among selected WTO members, especially by comparison with the slow rates of growth in most of the GATT period. As of 1965 only four of the 22 future WTO members shown in the table had RTAs, but just before the start of the Uruguay Round over half of them did; by 2005 they all had at least one. The rate of increase stepped up after the WTO came into effect, with the average number of RTAs among these members more than doubling in

each ten-year increment. There are still a few relatively large developing countries that can count their RTAs on just one hand, but there are also a growing minority of developing countries that have more agreements than people have fingers.

We have seen four phases in the negotiation of RTAs since the creation of the multilateral trading system. The first lasted from the start of the GATT system through the early 1980s, when RTAs remained rare exceptions to the multilateral rule and were largely confined to agreements among countries in the same region. These were common both to the developing countries and, in the case of Western Europe, the developed countries. The most typical agreements in this period consisted of customs unions (or free trade agreements that called themselves customs unions) among more or less similar countries in the same neighborhood. The main difference at that time was between the open regionalism practiced in the European agreements and the closed regionalism of most pacts among developing countries; whereas the members of the two major European associations — the European Free Trade Association and what is today the European Union — engaged simultaneously in regional and multilateral liberalization, many of the agreements among developing countries were designed to be the regional complements to a policy of import substitution industrialization (i.e., protectionism).

The second phase, which roughly coincided with the Uruguay Round (1986-1994), saw an increase in the pace and direction of RTA talks. Here the dominant pattern shifted to North-North agreements between countries of manifestly different size (e.g., the U.S.-Canada FTA) and North-South agreements in which the asymmetries were even greater (e.g., the many agreements that developing countries negotiated with the European Union and the United States). The only real difference between this second phase and the third one that followed it, which more or less coincided with the inauguration of the WTO, was in the sheer quantity of agreements. Whereas there were still comparatively few RTAs being negotiated around the time of the Uruguay Round, since then the pace has accelerated greatly. The rate at which RTAs entered into effect rose from 2.1 per year in the late GATT years (1980-1994), most of them coming at the end of that period, to 9.0 per year in 1995-2003 and 15.2 in 2004-2015.³

Table II.1: Cumulative Notified RTAs of Selected WTO Members, 1965-2015 (Includes Free Trade Agreements and Customs Unions in Effect at Year's End)

	GATT Period			WTO Period		
	1965	1975	1985	1995	2005	2015
Quad						
European Union	1	5	5	8	25	37
Japan	0	0	0	0	2	14
United States	0	0	1	2	8	14
Canada	0	0	0	1	4	10
Average for Group	0.3	1.3	1.5	2.8	9.8	18.8
Other Developed						
Switzerland	1	2	2	5	15	30
Norway	1	2	2	6	15	28
Australia	0	0	2	2	5	11
Average for Group	0.7	1.3	2.0	4.3	11.7	23.0
BRICS						
Russia	0	0	0	12	14	16
India	0	0	0	0	3	15
China	0	0	0	0	4	13
South Africa	0	0	0	0	3	3
Brazil	0	0	1	2	2	2
Average for Group	0.0	0.0	0.2	2.8	5.2	9.8
Other Developing						
Chile	0	0	1	1	9	26
Singapore	0	0	0	1	9	22
Turkey	0	0	0	1	7	20
Korea	0	0	0	0	1	13
Mexico	0	0	1	4	13	13
Peru	0	0	1	2	2	13
Costa Rica	1	1	2	3	6	11
Thailand	0	0	0	2	5	10
Colombia	0	0	1	3	3	9
Israel	0	0	1	2	6	6
Average for Group	0.1	0.1	0.7	1.9	6.1	14.3
Average for All	0.2	0.3	0.8	2.4	6.9	14.9

Source: Tabulated from data in the WTO Regional Trade Agreements Information System at <http://rtais.wto.org/UI/Public-MaintainRTAHome.aspx>.

Note: The data are reported as averages rather than totals so as to avoid the problem of double-counting (e.g., if an FTA between Chile and Korea were counted for both of these countries the totals would be distorted).

We now appear to be in a fourth and especially consequential phase. Even with the quickening of negotiations in that third phase, the largest players continued to show great restraint by confining their RTA negotiations to small and medium-sized countries. The largest players still reserved negotiations with one another to the WTO system. That has all changed in the course of just a few years. Starting around 2013, the major economies began to explore the possibility of mega-regional agreements that would directly link them to one another. The most significant agreements are those that the “Big Four” economies are now negotiating among themselves. Of the six possible combinations of pairings among China, the European Union, Japan, and the United States, one is already negotiated (via Japanese and U.S. participation in the TPP) and three others are under negotiation. The only two arrangements that policymakers in the Big Four countries have yet to broach are U.S.-China or E.U.-China agreements.

B. DECISION-MAKING AND LEADERSHIP IN THE TRADING SYSTEM

RTAs among the Big Four economies raise serious questions regarding the willingness of the traditional leaders in the multilateral system to play their established role. The questions are even more pressing for the TTIP than it is for the TPP. There had long been an informal Group of Two that took the initiative in multilateral negotiations, with the original G-2 of the United States and the United Kingdom eventually giving way to an E.U.-U.S. group. For decades these G-2 members reserved their commercial dealings with one another almost entirely to the GATT and the WTO. Many other countries frequently complained over the unfairness of a restricted “green room” approach to trade negotiations in which the major decisions were made by the G-2 plus a select group of large players. Canada and Japan rounded out the Quad, and the other countries inside the green room typically included a few other developed (e.g., Australia) and developing (e.g., Brazil and India) countries, but most of the remaining countries were kept outside that room. Both aspects of the system have changed. It is true that decision-making in the WTO system is now more democratic than it was in the GATT, but it may be even more significant that the original G-2 is devoting more of its limited energy to the TTIP negotiation than

it is to reviving the WTO, and the other Quad countries have joined the United States in the TPP.

Policymakers in both Brussels and Washington now look back fondly on a time when reaching agreement among themselves was not just a necessary but a sufficient condition for the conclusion of a multilateral negotiation. That was definitely true for the first decades of the GATT, and was especially critical for the end-game of the Uruguay Round. That negotiation might never have ended without the deals struck in the final days between a GATT director-general from Ireland, an E.U. commissioner from the United Kingdom, and a U.S. Trade Representative. When Peter Sutherland, Leon Brittan, and Mickey Kantor cleared the main hurdles in 1993 they could not have known that this was the last time that the global community would entrust the outcome to such a small circle of North Atlantic negotiators. That discovery came precisely a decade, later when E.U. Trade Commissioner Pascal Lamy and U.S. Trade Representative Robert Zoellick failed to win over the rest of the WTO membership to their proposed deal for the Doha Round. In retrospect, the Cancún ministerial meeting in 2003 was a turning point. Since then it has been widely recognized that transatlantic concordance remains necessary for the conclusion of a round, but that it is no longer sufficient. Bringing the Doha Round to a successful conclusion would instead require the active support of a diverse range of countries whose positions appear increasingly difficult to reconcile. It may be nearly impossible in a system where decisions are taken by consensus, the results of negotiations are subject to a single undertaking, and so many WTO members place greater stress on their defensive than their offensive interests.

These concerns would be relevant even if the TPP and TTIP negotiations were not underway. The global redistribution of economic power is more rapid today than it was in the GATT era, and — as was suggested in Part I — the acceleration of that redistribution can be a destabilizing element in the trading system. Management of the multilateral system is made more complicated by the relative decline of the largest industrialized partners and the concurrent rise of emerging economies such as the BRICS (i.e., Brazil, Russia, India, China, and South Africa). As summarized in Table I.1, from 1995 to 2014 the Quad’s combined share of global GDP fell from nearly three-fourths to just over half. During that same time the BRICS, and especially China, have grown rapidly. As of 1995, the

Quad countries were 9.4 times larger than the BRICS; by 2014, this ratio had fallen to 2.5. More specifically, during 1995-2014 the relative economic magnitude of the United States *vis à vis* China fell from a multiple of 10.3 to only 1.7. The rising powers include some that had long been nominal members of the system but did not begin to exercise their potential until relatively late in the GATT period (e.g., Brazil, India, and South Africa), as well as others that did not accede until after the WTO was established. China acceded in 2001, and Russia in 2012. The WTO is now a more democratic institution than was its GATT predecessor: Membership is nearly universal, and decision-making is no longer concentrated in a few countries. Democracy is in principle quite preferable to monarchy or oligarchy, but it must also be acknowledged that there is an inverse relationship between the number of decision-makers in a system and the efficiency with which that system makes decisions. This is no less true for international organizations than it is for national governments.

Where does the TPP fit into this scheme? Like the TTIP, it can be seen as a manifestation of the frustration that the more pro-trade countries have felt over the repeated failures of the multilateral system. This is not an entirely new phenomenon; at least as far back as the 1970s, developed countries have periodically threatened to respond to the perceived heel-dragging or free-riding of developing countries by negotiating among themselves in the OECD or in some other

configuration. What is new here is that they are actually making good on that threat, both in a narrow forum such as TTIP (as well as a comparable E.U.-Japanese negotiation) and in the larger, more diverse forum of TPP, and there are several developing countries that now join them in this enterprise. All of the countries that are engaged in these negotiations declare that they remain committed to the multilateral system, and that they would prefer that their mega-regionals serve as complements rather than substitutes for negotiations within the WTO. Unless and until those multilateral negotiations produce major results, this may be a distinction without a difference.

C. THE SCOPE OF ISSUES IN THE TRADING SYSTEM

One of the most important roles for the leaders in the international trading system is to manage the constant redefinition in the subject matter of trade policy. The jurisdiction of this field is always a work in progress. While there are a few topics that are mandatory, especially tariffs and other measures affecting the cross-border movement of goods, the rest are elective. It has always fallen to the leading countries to act as the principal *demandeurs* on new issues, and they have not confined this activity solely to multilateral negotiations. RTAs can be used both to bring new issues into the system and to encourage deeper commitments on those issues that are within the scope of the multilateral system.

Table II.2: Shares of the Global Economy, 1995-2014 (*Countries' and Regions' Share of Global GDP*)

	1995	2000	2005	2010	2014	Change 1995-2014
Quad	75.4	73.7	70.1	59.7	54.3	-21.1
European Union-27	30.9	26.2	30.1	25.6	23.7	-7.2
United States	24.6	30.6	27.5	22.9	22.4	-2.2
Japan	17.9	14.6	10.0	8.7	5.9	-12.0
Canada	2.0	2.2	2.5	2.5	2.3	+0.3
BRICS	8.0	8.4	10.8	18.5	21.8	+13.8
China	2.4	3.7	4.9	9.4	13.3	+10.9
Brazil	2.6	2.0	1.9	3.4	3.0	+0.4
India	1.2	1.5	1.8	2.7	2.7	+1.5
Russian Federation	1.3	0.8	1.7	2.4	2.4	+1.1
South Africa	0.5	0.4	0.5	0.6	0.4	-0.1
Rest of World	16.6	17.9	19.1	21.8	23.9	+7.3
World	100.0	100.0	100.0	100.0	100.0	100.0

Source: Calculated from World Bank data at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

It would be a major fallacy of construction to think of RTAs only as smaller versions of the WTO, or to assume that their issue coverage is identical to the WTO. They can differ from the WTO both in the width of their issues and the depth of the commitments made on these topics. RTAs may constitute down payments that countries might later incorporate, in whole or in part, in their commitments at the multilateral level, and can establish precedents for the inclusion of new issues within the scope of trade policy. This logic also cuts the other way: When countries choose to negotiate via RTAs they may be foreclosing the possibility of bargaining among themselves on some topics that can be dealt with only at the global level. Agricultural production subsidies offer the best example of such an issue, due to how these subsidies operate. It is quite simple to discriminate among partners in the application of tariffs on imports, but there is no practical way to restrict the impact of production subsidies to some countries while exempting others.

The scope of negotiations has tended to increase over time, but that growth is neither constant nor irreversible. Table II.3 offers a quick summary of how the subject matter of trade negotiations has changed over time by tabulating the principal issues covered by GATT 1947, TPP, and seven other multilateral, bilateral, and regional agreements that fell between these brackets. The original GATT agreement covered only four of eighteen issues that are found in the TPP and shown in the table.⁴ The scope of issues expanded over time, but the additions do not always stick. Some topics found even in older RTAs are still not on the table in the WTO, and even some issues that have been put on the multilateral table have subsequently been removed. When an issue appears in successive trade agreements, however, the provisions tend to get more detailed. That can be seen in the sequence by which some items get promoted from the level of mere articles to entire chapters. It can also result in legal verbosity. For example, the TPP chapter devoted to intellectual property rights is, at about 22,500 words, on the same order of magnitude as the entirety of GATT 1947 (some 28,000 words, not counting the tariff schedules).

One of the main reasons why the major traders negotiate RTAs is that they have been frustrated in their efforts to expand the issue coverage of the multilateral system. Here the Uruguay and Doha round experiences differ greatly. One of the principal themes of the Uruguay Round was the U.S. insistence upon binging the new issues of services, investment, and intellectual property rights into the system; that goal,

which was largely successful, is discussed at greater length below. By contrast, the European Union was the principal *demandeur* for the Doha Round, but has been stymied at three stages: There are some issues that it failed to get onto the table when the round was launched (especially labor and the environment), its preliminary success on the Singapore issues was reversed after the collapse of the Cancún ministerial, and — apart from the “early harvest” on trade facilitation — progress on the remaining issues has been halted by the general impasse in the round.

There is a well-established tradition in which the United States and (later) the European Union have used RTAs as part of their strategy to introduce new issues to the trading system and, once they are on the table, to expand upon the commitments that countries are prepared to make on these topics. The classic example dates from the Uruguay Round, when the United States used FTA negotiations first with Canada (1986-1988) and then with both Canada and Mexico (1991-1994) to promote what were then called the “new issues” of investment, services, and intellectual property rights. The very first step in that direction actually came in the negotiation of a U.S.-Israeli FTA in 1985, which was the initial U.S. foray into RTAs, but that agreement affected little trade, was more symbolic than substantive, and covered these new issues in brief articles that were more aspirational than detailed. The U.S.-Canada agreement was much more significant insofar as it governed the largest bilateral trade relationship in the world, the precedents that it set on these issues were much more detailed, and the threat that it posed to other countries was far greater. By launching the bilateral negotiations with Canada immediately before the start of the Uruguay Round, the United States was signalling to other countries that if they did not agree to negotiate on these issues multilaterally the United States was prepared instead to negotiate solely on a bilateral or regional basis. That threat worked, as the precedents set by the successive FTAs in North America helped to shape the environment for, and the substantive provisions of, the Uruguay Round agreements.

The United States and the European Union have approached the relationship between RTAs and the multilateral system in two ways since the end of the Uruguay Round. One is to treat RTAs as a means of obtaining deeper commitments from countries than they were willing to make in that round, or in subsequent negotiations in the WTO, by exchanging deeper commitments for free access to the E.U. and U.S. markets. This allowed them to correct for what

Table II.3: Issue Coverage of Selected Trade Agreements (Years Indicate Date of Signature)

	GATT 1947	Tokyo Rd. Agreements 1979	U.S.-Israel FTA 1985	N. American FTA 1992-1993	Uruguay Rd. Agreements 1994	Doha Min. Declaration 2001	U.S.-Chile FTA 2003	U.S.-Korea FTA 2007	TPP 2015
Core Issues									
Tariffs	●	●	●	●	●	●	●	●	●
Antidump. & Countervail.	●	●	■	●	●	●	●	●	●
Safeguards	●	●	●	●	●	-	●	●	●
Uruguay Issues									
Agriculture	-	■	-	●	●	●	●	●	●
Intellectual Property	-	-	●	●	●	●	●	●	●
Services	-	-	●	●	●	●	●	●	●
Singapore Issues									
Government Procure.	-	■	●	●	■	④	●	●	●
Investment	-	-	●	●	●	④	●	●	●
Competition Policy	-	-	-	●	-	④	●	●	●
Trade Facilitation	-	-	-	●	-	●	●	●	●
Other Issues									
State-Owned Enterprises	●	-	-	●	●	-	●	●	●
Environment	-	-	-	●	●	●	●	●	●
Geographical Indications	-	-	-	●	●	●	●	●	●
Labor Rights	-	-	-	●	-	-	●	●	●
Temporary Entry	-	-	-	●	●	-	●	●	●
Electronic Commerce	-	-	-	-	-	●	●	●	●
Anti-Corruption	-	-	-	-	-	-	-	●	●
Regulatory Coherence	-	-	-	-	-	-	-	-	●

● = Full chapter, annex, appendix, or other section or side agreement devoted to the issue (or implied to be so by the terms of the Doha Ministerial Declaration).
 ■ = A GATT or WTO agreement that is plurilateral.
 ● = One or more full articles devoted to the issue. Note that the data for NAFTA include the side agreements that were negotiated in 1993.
 ④ = Issues that were originally covered by the Doha Ministerial Declaration but were subsequently taken off the table in the Doha Round.
 - = No explicit coverage.

Brussels and Washington saw as the shortcomings of the Uruguay Round agreements. That dissatisfaction was based either on the general terms of an agreement, or on the specific commitments that individual WTO members make in their schedules. An example of the first type would be the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the rules of which were not as strict as the United States would have liked, while the commitments that many countries made in the General Agreement on Trade in Services (GATS) offer a good example of the latter type of concern. In either case, RTAs offer the E.U. and U.S. negotiators a second chance with their individual partners. Many aspects of the RTAs that they have negotiated with developing countries since 1995 have been TRIPs-plus, GATS-plus, or otherwise WTO-plus in the general rules and specific commitments that they achieve.

These largest WTO members have also used their post-Uruguay Round negotiations to introduce even newer issues such as labor rights, environmental protection, government procurement, state-trading enterprises, and competition policy. Having failed to convince the mass of WTO members to negotiate on these issues in the Doha Round, they have instead fallen back on RTAs as an opportunity to win concessions on these issues. To a considerable extent, the commitments that the United States secured in the TPP represent a regionalization of topics on which it has already been negotiating in a one-by-one basis for the past two decades.

Will the TPP bargains on these issues set precedents for adoption by still more countries? There are three ways that this could happen. One is by the adherence of new countries to the TPP through accession; several countries in Asia and in Latin America have expressed their interest in joining. Another possibility is that these same bargains will be picked up, perhaps with further modifications, in agreements that the existing TPP countries reach individually with more partners in other quarters of the globe; that might even happen in agreements that are between non-TPP countries. Yet a third possibility is that these precedents might be taken up in the WTO itself, either as part of a final deal to resolve the Doha Round or (more realistically) in some new configuration of negotiations. There is precedent for such a development, as provided in the aforementioned case of the Information Technology Agreement. That last option would of course be the preferred outcome for multilateralists.

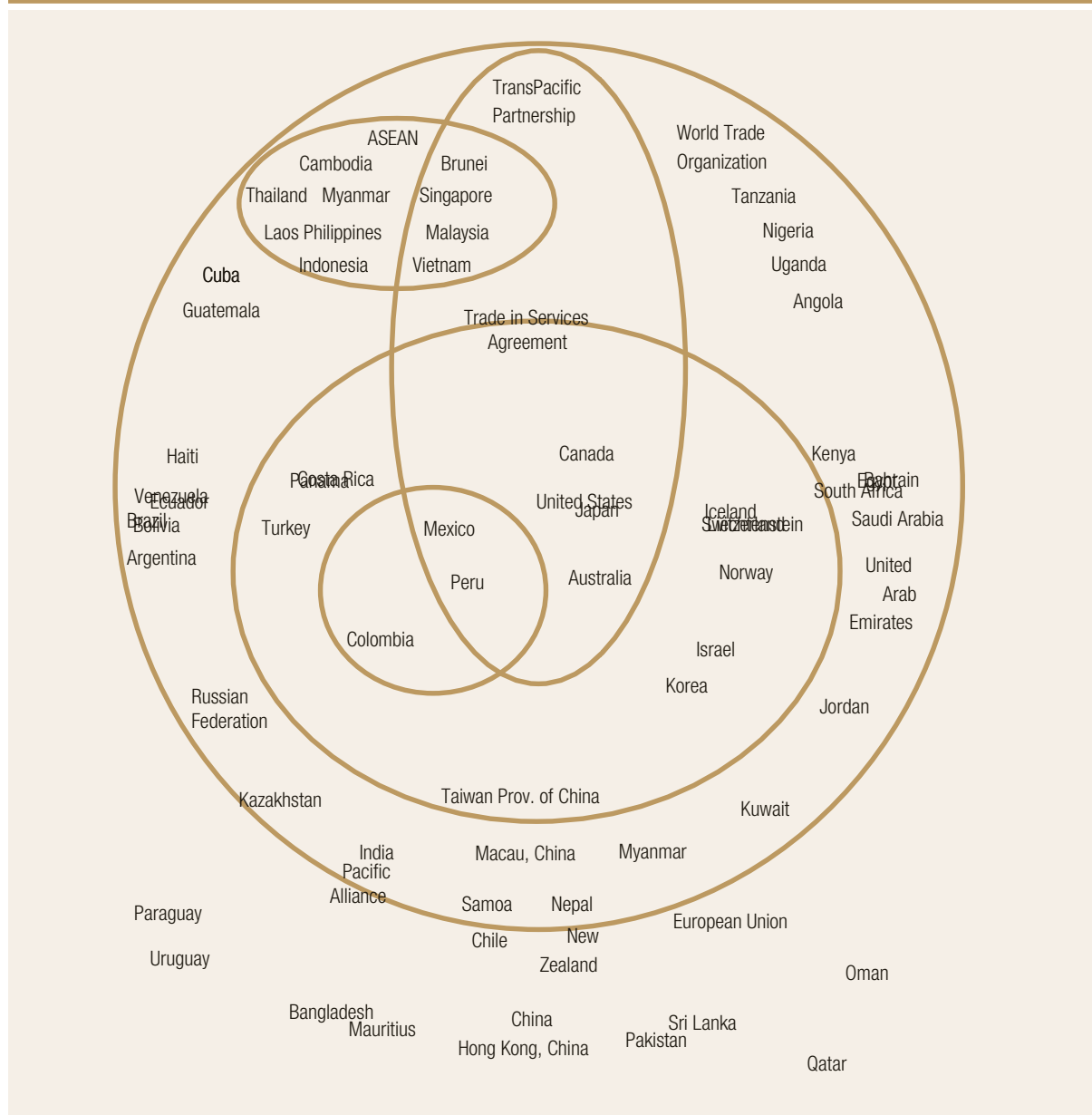
D. CAN MULTIPLE RTAS BE A SUBSTITUTE FOR MULTILATERALISM?

As was discussed in Part I, it is possible that RTAs might offer a substitute for multilateralism by creating regional public goods. That seems clear in principle, but in actual practice can the negotiation of a series of bilateral and regional agreements take the place of a comprehensive and non-discriminatory multilateral trading system? A few general points may be made in response to that question. The first is to reiterate that the issue coverage of the WTO and RTAs is not identical, and so there are some inevitable qualitative differences. Any country that wishes to improve its access to foreign markets by way of RTAs must recognize that in so doing it may be foregoing the opportunity that the WTO offers, at least theoretically, to negotiate on issues that are best handled multilaterally (e.g., agricultural subsidies). The country will also be asked to increase the width and the depth of the commitments that it makes on issues of special interest to the United States and the European Union. It should also be stressed that most RTAs do not provide for extensive institutional arrangements (the European Union being more the exception here than the rule), and that the asymmetries between developing countries and the larger developing countries are even greater in RTA negotiations than they are in multilateral talks.

If we put each of these points to the side, we can see that there certainly are some countries that seem prepared to treat RTAs as a substitute for the WTO. The Venn diagram in Figure II.1 identifies the seventeen developing economies that are engaged in either or both of the most significant trade agreements now underway. In addition to the TPP, this includes the Trade in Services Agreement (TiSA) negotiations taking place at the margins of the WTO. Three of these seventeen — Chile, Mexico, and Peru — are parties to both talks. Significantly, these three countries are also members of the Pacific Alliance.⁵ Four other countries (all of them ASEAN members) are in the TPP but not in TiSA, and ten others are engaged in TiSA but not the TPP. It is no coincidence that most of these seventeen economies have multiple RTAs in place. Even among this most active set of countries, however, there are only two — Chile and Peru — that have already concluded RTAs with all of the Big Four economies (as discussed in Figure II.1).

We may reach similar conclusions, and with some of the same countries, by examining patterns in the negotiation of their extra-regional RTAs with major economies. Here we can go beyond the Big Four to enumerate the RTAs that various developing countries have negotiated with

Figure II.1: Overlapping Membership of Four Organizations or Negotiations (Membership for the TPP, TISA, ASEAN, and the Pacific Alliance Are Comprehensive; Membership for All Other WTO Members is Selective and Illustrative)



Note: Among the countries not yet in the WTO are 21 whose accessions are still underway (a few of the larger ones being Algeria, Ethiopia, Iran, Iraq, and Sudan) and several others that have never applied for accession (e.g., the People's Democratic Republic of Korea, Somalia, and South Sudan).

the Big Six (i.e., the Big Four plus Australia and Canada). The data in tables II.4 and II.5 illustrate the great divide that now separates two sets of developing countries, showing the extent to which different countries have concluded or are now negotiating trade agreements with six large economies. Consider first the seven developing TPP countries shown in Table II.4. Of the 42 potential RTA relationships that these countries might have with the six large economies, 26 are already in place and four more

are currently under negotiation. In other words, 71.4% of the potential RTA relationships among these partners would be in place even without the TPP. That coverage is almost as great for five of the most frequently mentioned TPP candidates, as also shown in the table: Twenty (66.7%) of the 30 potential RTA relationships between them and the Big Six economies are in effect or under negotiation. This may be contrasted with the position of 30 other large developing countries, as shown in Table

II.5. The countries in this table are the largest developing countries in each of three regions, minus those that are already shown in Table II.4 (i.e., China and the twelve actual or potential TPP countries). These 30 countries could potentially have 180 RTAs with the Big Six, but just 33 (18.3%) of these possible agreements are either in effect or under negotiation. Even among those countries in the table that have RTAs with at least one of the Big Six, only one of them (Thailand) has such arrangements in effect or under negotiation with more than three of these largest economies.

We see here the divide between that small but growing number of developing countries that are eager to conclude trade agreements, and the larger number that take a more cautious approach. There are more developing countries for which the portfolio of extra-regional RTAs bears a close resemblance to the countries in Table II.5 (i.e., agreements with few or none of the Big Six) than there are countries like those in Table II.4 (i.e., agreements with most or all of the Big Six). There are also some important regional differences. One finds several countries in Latin America and in Asia that are devoted

to the negotiation of multiple trade agreements, and a few such countries in the Middle East, but there are no African or Caribbean countries that fall into this category. The European Union is the only large partner with which several African and Caribbean countries have thus far been willing to engage in RTA negotiations, and only a few of those negotiations for economic partnership agreements have so far been concluded.

What the data tell us is that there are indeed countries that try to treat RTAs as a substitute for multilateral agreements, but that they still constitute a minority within the developing world. This implies that the agreements that they reach with the Big Six economies will, by definition, fall short of a multilateral agreement in one important sense: They will encourage trade with the North, and with a part of the South (i.e., China and the other countries that negotiate multiple extra-regional RTAs), but they will not encourage deeper trade with the rest of the developing world. This is yet another way in which discriminatory agreements remain a second-best alternative to multilateral agreements.

Table II.4: Developing TPP Countries' Trade Agreements with Six Major Economies

	North Atlantic Economies			Pacific Economies		
	European Union	Canada	United States	Australia	Japan	China
TPP Signatories						
Brunei				■	■	■
Chile	■	■	■		■	■
Malaysia	□			■	■	■
Mexico	■	■	■		■	
Peru	■	■	■		■	■
Singapore	□	□	■	■	■	■
Vietnam	□			■	■	■
Potential TPP						
Colombia	■	■	■			
Costa Rica	■	■	■			■
Korea	■	■	■	■	□	□
Panama	■	■	■			
Philippines	□			■	■	■

Major Developed Economies in the TPP

■ = RTA in effect

□ = RTA under negotiation or pending ratification (i.e., early notification made to WTO), not including the TPP itself.

Source: Tabulated from data in the WTO's Regional Trade Agreements Information System at <http://rtais.wto.org/UI/Public-MaintainRTAHome.aspx>.

Table II.5: Selected Developing Countries' Trade Agreements with Six Major Economies


	North Atlantic Economies			Pacific Economies		
	European Union	Canada	United States	Australia	Japan	China
Latin America & Caribbean						
Argentina						
Bolivia						
Brazil						
Cuba						
Dominican Republic	■	□	■			
Ecuador						
Guatemala	■	□	■			
Haiti	■	□				
Uruguay						
Venezuela						
Asia & Pacific						
Bangladesh						
India	□				■	
Indonesia				■	■	■
Iran						
Iraq						
Myanmar				■	■	■
Nepal						
Pakistan						■
Sri Lanka						
Thailand	□			■	■	■
Africa & Middle East						
Algeria	■					
Dem. Rep. of the Congo						
Egypt	■					
Ethiopia						
Israel	■	■	■			
Kenya	□					
Nigeria	□					
Saudi Arabia	□			□	□	
South Africa	■					
Tanzania	□					

■ = RTA in effect

□ = RTA under negotiation or pending ratification (i.e., early notification made to WTO)

Major Developed Economies in the TPP

Source: Tabulated from data in the WTO's Regional Trade Agreements Information System at <http://rtais.wto.org/UI/Public-MaintainRTAHome.aspx>.



**Implications of
the TPP for the
Trade Strategy of
the United States**

As discussed in the preceding section, one of the main challenges faced by the international trading system comes in dealing with the global diffusion of economic and political power. For decades after the Second World War the multilateral system depended critically upon U.S. leadership, but over time the growth of other powers in the developed and the developing worlds has led to changes in the trading system and the role that the United States plays in it. The TPP can be seen, together with the TTIP, as a U.S. response to this shift. But what exactly does this portend for U.S. policy in the near and long terms?

Both the U.S. presidential election and the domestic approval process for the TPP are still at early stages of development at the time of this writing. Any definitive statements on how either of those processes will turn out would run a serious risk of being outdated between the time that the author's fingers touch the keyboard and the reader's eyeballs scan the page. It is obvious to even the most casual observer that the fate of the TPP will depend greatly on the tone and outcome of the 2016 presidential elections, and the trajectory of that race has thus far been unkind to the TPP. It would be a mistake to see this solely as a one-time problem, as it is instead representative of the confluence of the trends in the domestic and international politics of trade. No matter what the outcome of this one election or the debate over this one trade agreement, those trends are here to stay.

A. WILL THE UNITED STATES APPROVE THE TPP?

The history of the trading system is replete with examples of initiatives that died or were otherwise weakened because of the opposition that they encountered from the U.S. Congress. This point reflects the perennial irony by which the United States is historically the most vigorous *demandeur* on new issues, yet is also the country whose legislative branch has the longest record of rejecting agreements that break new ground. This is one among several aspects of U.S. political culture that differ sharply from those of most other countries: The legislative branch has historically felt little need to show deference to the executive branch on matters of diplomacy. If Congress were habitually deferential to presidents it would have approved the Versailles Treaty after the First World War and the Havana Charter of the International Trade Organization (ITO) after the Second World War. Both

of those agreements began their short lives as the pet projects of U.S. presidents, but the Senate amended the first one to death and Congress never took up the second one. The only difference between them is that the rest of the world tried to make the League of Nations work without the United States, but never tried to do the same with the ITO. It is possible that the TPP could go the way of those earlier failures. It is worth noting that each of those failed agreements were negotiated by a Democratic president, but were then submitted to a Congress controlled by Republicans; the TPP currently faces that same configuration of divided government.

The most immediate question is whether the debate over ratification of the agreement will take place in the waning months of the Obama administration, or if it will instead be postponed until after a new president is inaugurated in January, 2017. The president is already a "lame duck" (i.e., an incumbent whose term is about to end), and hence has less leverage now than at any other time of his presidency. It is highly doubtful that President Obama will be able to secure a congressional vote on the agreement during the regular session of the 114th Congress (2015-2016), which will adjourn prior to the congressional and presidential elections that take place on November 8, 2016, but chances are better that a vote could be taken in a special, post-election session of the same Congress. It has become common in recent years for legislators to put off action on controversial and unpopular measures until it meets in "lame duck" sessions⁶ that come between the election and the sitting of a new Congress. In this specific case, the members of the 115th Congress (2017-2018) that are elected in November will not be sworn into office until January 3, 2017. It is quite possible that the 114th Congress will meet in the final weeks of 2016 to take up matters that it had not disposed of before the election, and the implementing legislation for the TPP could be one of those matters.

While it is thus possible that Congress will vote on the TPP before President Obama leaves office, that is by no means certain. The winner of this year's election may therefore inherit the debate over approval of this agreement. There are many precedents for such an outcome; in fact, several negotiations for significant U.S. trade agreements began under one president and were approved under that person's successor, or even his successor's successor. That was the case for the Kennedy, Tokyo, and Uruguay rounds in the GATT, as well as the North American FTA and some FTAs with

smaller partners (e.g., Chile, Jordan, and Singapore). The TPP was already guaranteed to be a two-president deal, with the United States having joined the talks in the waning days of the Bush administration, and will likely end up as a three-president initiative. What is much less certain is whether that third president will be just as enthusiastic about the deal as were the first two. And even if the winner of the 2016 presidential election is pro-TPP, we will still want to know if that person enjoys the blessings of unified government. If either the House of Representatives or the Senate is controlled by the opposition party, even a newly elected and pro-TPP president may find the approval process to be difficult.

Current indications are that each of the leading contenders in the two parties has at least some degree of opposition to the TPP. The Democratic nomination is being contested between former Secretary of State Hillary Clinton and Senator Bernie Sanders. While Sanders opposes the agreement altogether, Clinton seems to have adopted a posture of tactical opposition to the TPP (i.e., one that is based more on the immediate need to appeal to a Democratic constituency than on fundamental opposition to the TPP *per se*). One gets the sense that Secretary Clinton might well be prepared to approve the agreement if it were adjusted in some way that allowed her to claim it as her own, but is unclear whether that would involve minor tweaks or major changes. It is also easy to imagine scenarios in which she did not make strong objections to approval of the agreement in a lame-duck session. On the Republican side, the question has been reduced to whether the nomination will go to businessman Donald Trump or to some other candidate such as Senator Ted Cruz. Mr. Trump has made opposition to trade agreements a cornerstone of his campaign, but one can only guess whether he would, if elected, reject the TPP altogether or seek to renegotiate it in its entirety. Other potential Republican nominees are generally more pro-trade, but may not wish to express approval for anything associated with President Obama. It is still too early to say whether the nominations will be secured by either or both of the front-runners (i.e., Clinton and Trump), and there could be other surprises in store for the election. These might include a third-party candidacy either by Donald Trump (should he fail to win the Republican nomination) or by Republicans who are opposed to Mr. Trump (should he secure it).

For want of an infallible prediction on who will be nominated by their respective parties and who will win the general election, we can instead look to the past for guidance. There is nothing unprecedented about concluding an important trade negotiation in the midst of an election year. As can be seen from the experiences summarized in Table III.1, there are five cases in the past generation that might offer clues on where the TPP debate is headed. Each one of these cases, in which a pending trade agreement was up for consideration during either a congressional or a presidential election,⁷ present models that might possibly be replicated in the coming months.

The least plausible model for the approval of the TPP is the one by which the U.S.-Canada FTA was handled during the presidential election year of 1988. That agreement was approved quickly, by wide margins, and was not caught up in any significant way with the pending election. The Obama administration acted for a time as if that were a viable option for the TPP, and at least one Republican leader (Speaker of the House Paul Ryan) sounded as if he would support such an initiative,⁸ but it is difficult to imagine that experienced policymakers either in the administration or in Congress truly believe that this will happen. To the extent that they are working on the matter in the months that precede the election (especially in devising the terms of the implementing legislation) they may be preparing for the lame-duck scenario described below. There nonetheless remains an extremely small chance that Congress might hold its final votes on the TPP before the November elections; we might assign a 1% probability to that scenario.

It is more reasonable to expect that the administration hopes for a scenario comparable to the way that the Uruguay Round agreements were approved. If Congress is to enact the implementing legislation for the TPP while President Obama is still in office, it will almost certainly do so during a "lame duck" session in the final weeks of 2016. The feasibility of this scenario depends in part on the tenor of the presidential election campaigns and in part on the bargaining between the executive and legislative branches over the precise terms of the implementing legislation (as described below in section III.C). This scenario will be viable if three conditions are met: That inter-branch bargaining is concluded without major delays or hard feelings, the TPP does not become a major issue in the final phase of the presidential campaign, and the ultimate winner does not express strong opposition to

approval of the agreement in a lame duck session. If this were a more typical presidential-election year — that is, one in which candidates Trump and Sanders have not been perceived to have gotten as far as they have on an anti-trade message — this is the scenario that might be seen as most probable. Under the current circumstances, however, the probability of this happening might now be something on the order of 25%. That is a probability that could be adjusted up or down in coming months, depending on the outcome of the nomination process and the general election.

The second most favorable outcome, from the perspective of other TPP countries, is one in which the approval process for the agreement is postponed for a year in order to isolate it from electoral politics. That is what happened with the Central American FTA (CAFTA), which was ultimately approved as negotiated (i.e., without acceding to any demands for changes in the terms of the agreement). The margin by which it was approved was very close, but in the end the process was quite successful. In order for the same thing to happen in 2017 we would need to see the election not only of a new president who favors the TPP, but also one who demands no changes in the agreement. It would also help if that candidate's victory was complemented by his or her party securing majorities in both chambers of Congress. This is a scenario to which the author would assign a probability of just 5%.

Approval of the TPP will be much more complicated, and the outcome less certain, if it follows the patterns set by the North American FTA (NAFTA) and the later FTAs with Colombia and Panama. These cases each involved renegotiation and postponement. In the case of NAFTA the approval process was put off for a year, and succeeded only after the new administration negotiated numerous other bargains with Mexico, Canada, and members of Congress. These included side agreements on labor, the environment, and import surges, as well as numerous smaller bargains made during the bargaining with Congress over approval of the agreement. Some of that bargaining led to the signing of U.S.-Mexican side letters that made changes in the terms of the agreement. The FTAs that were negotiated with Colombia and Panama offer a variation on this theme. In this case the process lasted

far longer, and the changes went far deeper. Whereas the approval process was delayed for just a year in the case of NAFTA, those latter agreements were in limbo for five years. The changes that were made in these agreements are discussed below in section III.C. There is perhaps a 35% chance that the approval of the TPP will follow a pattern like the NAFTA/CAFTA experiences.

Readers who are mathematically inclined will see that the cumulative probability of the scenarios discussed above, each of which results in the final approval of the TPP, is 66%. There thus remains a 34% probability that the TPP will fail to be approved. There are several ways that this could occur. One is that the United States will elect a new president who says that he or she is prepared to press for TPP approval only if significant changes are made to the agreement, but the other eleven signatories either refuse to negotiate or fail to agree on acceptable changes.⁹ Failure might also result from the United States electing a new president who is entirely opposed to the agreement, and/or a complete impasse is reached in the bargaining between the two branches of the U.S. government over the terms of the implementing legislation, and/or Congress ultimately votes against approval of the implementing legislation. There is no precedent for any of these options in recent U.S. history, but similar things did happen to trade agreements in the more distant past. Congress never took up the Havana Charter of the International Trade Organization when President Truman submitted it in 1947, as was mentioned above, and twenty years later the Senate balked when President Johnson sought congressional approval for two non-tariff agreements reached in the Kennedy Round of GATT negotiations.

In brief, approval of the agreement is more likely than rejection, but that remains a matter of pure conjecture. It should be stressed that each of these estimations could change substantially, either up or down, in response to real-world developments on the campaign trail and in Congress. The long and short of it is that the process could last much longer than the TPP partners of the United States would like, and even then it could come short of the needed support in the White House and/or on Capitol Hill.

Table III.1: Trade Agreements Considered in Congress during U.S. Election Years

Case	Election Type	Political Reception of the Trade Agreement	Results
U.S.-Canada FTA (1988)	Presidential election in which the incumbent vice president (GHW Bush) successfully sought to replace a two-term president (Reagan).	The agreement was generally not considered controversial in the United States and was not a high-profile issue for either the Republican or the Democratic candidates.	Congress approved the implementing legislation on a bipartisan basis and by wide margins in late September, 1988 (i.e., six weeks before the election).
North American FTA (1992)	Presidential election in which a first-term president (GHW Bush) sought reelection, challenged by both the winning Democrat (Clinton) and a third-party candidate (Perot).	The agreement had a very high profile, having been concluded by the Republican incumbent and strongly opposed by Perot. Clinton announced he would support it only if supplemented by side agreements on labor, the environment, and import surges.	Clinton won the election and negotiated the side agreements. Congress approved the NAFTA implementing legislation in 1993 (one year after the original negotiations ended), but only after hard bargaining and some changes to the terms.
Uruguay Round (1994)	A mid-term congressional election that took place when the incumbent Democratic president (Clinton) was losing popularity and in which Republicans retook control of Congress.	The agreement was supported by most legislators in both parties, but strongly opposed by one Democratic chairman in the Senate. If not for the special TPA rules, that chairman might have prevented a vote on the implementing legislation.	Congress approved the implementing legislation for the agreement in the “lame duck” session that came between the congressional elections (November, 1994) and the sitting of the new Congress (January, 1995).
U.S.-Central American FTA (2004)	Presidential election in which a first-term president (GW Bush) sought and won reelection.	The agreement was highly partisan, being opposed by many Democrats in Congress.	Negotiations ended in January, 2004, but the administration withheld the FTA until after the elections. It was approved (without changes) on close, party-line votes in Congress.
FTAs with Three Partners (2006)*	A mid-term congressional election that took place when the incumbent Republican president (GW Bush) was losing popularity and in which Democrats retook control of Congress.	The FTA with Colombia was highly partisan due to Democratic concerns over labor rights in the partner country. The agreements with Panama and Peru were also controversial, but not to the same degree.	The administration negotiated a revision of the FTA with Peru and secured its approval in 2007, but the other FTAs were not approved until 2011, after the Obama administration concluded further internal and international negotiations.

* Note also that an FTA was concluded with Korea in 2007 (i.e., after the election), and its consideration in Congress became tied to those with Colombia and Panama.

Note: All presidential elections (which come every four years) are also congressional elections (which come every two years). All elections are in November

B. PARTISANSHIP AND DIVIDED GOVERNMENT IN U.S. TRADE POLICYMAKING

No matter when Congress takes up the implementing legislation for the TPP, and no matter who is president at the time, the process will be heavily colored by partisanship. The trend in recent decades had been for the two parties to adopt ever more conflicting positions, and to favor a gridlock that is rooted in opposing principles over a pragmatism that is based on compromise. One way of measuring this partisan trend is by quantifying the degree to which members of the same party vote together. The CQ RollCall index of

party unity identifies the number and outcome of votes in which a majority of voting Democrats opposed a majority of voting Republicans. In 1972 the average Democrat in the House of Representatives sided with the rest of his party 58% of the time in these party-unity votes, and the average Republican did so 67% of the time. By 2012 these figures had risen to 88% and 92%, respectively.¹⁰ That same trend can be seen in votes on trade policy, where Republicans will typically vote for open markets about 90% of the time but a majority of Democrats will usually be opposed. That latter number varies greatly, however, depending on the specific terms of the proposal and who happens to occupy the White House. It may also be affected by the changes that could be taking place in the base of

the Republican Party, where a large bloc of ordinary voters is being drawn to protectionist rhetoric.

The intensity of partisanship on trade has, as suggested in Part I, been worsened by two trends. The increasing level of income inequality has heightened the conflicts between Democrats (who side with labor) and Republicans (who side with business) on trade and other economic issues, but their differences over the most traditional issues in trade are not as intractable as those that have arisen with the introduction of new issues to trade debates. Officeholders in the two parties are more deeply divided over such topics as labor rights and environmental protection, as well as differing concepts of distributive justice and disagreements over the proper role of the state in the economy. Trade debates are no longer about free trade *versus* protectionism, but have gradually become something of a proxy war over issues that speak more directly to the core differences between the two parties. Partisanship can also be exacerbated in some cases, or reduced in others, when the vote in question concerns an RTA with a specific partner or group of partners. Democrats are sometimes more willing to vote for RTAs that are seen to serve other goals in foreign policy, as has been the case for most (but not all) of the FTAs reached with Middle Eastern countries. Quite the opposite was the case for the FTA with Colombia, which the vast majority of Democrats opposed due to concerns over that country's record on labor rights.

Partisanship is an even greater problem whenever government is divided and the president is forced to bargain with an opposition party that is in a position of strength. Divided government occurs whenever one or both of the chambers of Congress is controlled by the opposition party. It was once an anomaly in the United States, but is now the normal state of affairs. Government was wholly or partly divided in just seven of the 34 congresses (20.6%) from 1901 through 1968, but the share grew to 18 of the 24 congresses (75.0%) from 1969 through 2016.¹¹

Starting with the Clinton administration, presidents have managed to accomplish much of what they wanted on trade whenever they enjoyed the luxury of unified government but achieved far less whenever the opposition party controlled Congress. Thus Clinton secured approval for NAFTA and the Uruguay Round agreements during the first two years of his mandate (1993-1994), when Democrats controlled Capitol Hill, but eked out only a few wins during the six years that

followed Republican victories in the 1994 elections. Similarly, the G. W. Bush administration had its way during the six years that its Republican allies were in the majority (2001-2006), but after Democrats retook Congress in the 2006 elections they bargained hard with the White House and blocked more initiatives than they approved. Matters have been even worse for trade policy under President Obama, who (like Clinton) enjoyed unified government for only the first two of his eight years but (unlike Clinton) did not take up any trade initiatives during that period.

For all of these reasons, it will be important not to focus solely on the presidential election in the coming months. No matter which party holds the White House, the prospects for trade policymaking in 2017-2018 — perhaps including a vote on TPP — will depend heavily on whether the next president is supported by majorities in both chambers of Congress. Analysts had long believed that Democrats had only a small chance of retaking control of the Senate in the 2016 elections, and virtually no chance of achieving that feat in the House of Representatives, but the possibility of Donald Trump winning the Republican presidential nomination has led some to revise those projections. While Mr. Trump attracts intense support from a sizeable group of Republicans, he is deeply unpopular in the electorate as a whole. Many analysts believe that if he were to be the Republican candidate, he would give Democrats a greater chance of retaking not just the Senate but also the House.

Whether or not Mr. Trump wins the Republican nomination, and no matter what happens in the general election, he may have sparked important changes in the domestic U.S. politics of trade. It has now been a generation since the Republican Party replaced the Democratic Party as the principal advocate of free trade, but the Trump candidacy has laid bare a divide between the party's officeholders and a significant part of its base. Donald Trump's unexpected success has been due in great part to support from less-educated, lower-skilled white males in industrial states, many of whom are drawn to his message that trade deals have harmed the U.S. economy. There is a strong possibility that this specific messenger will ultimately be defeated, either through denial of the nomination or in the general election, but other Republican politicians will take note of the message. Will future Republican candidates and office-holders replicate it? It will be important to note whether Republican congressional candidates strike more trade-skeptical postures in the

remaining months of this electoral season. And the vote on the TPP, whenever it comes, will offer an even greater opportunity to answer that question. Trade agreements approved over the few decades have depended largely on Republican votes in Congress, but that bedrock of Republican support may no longer be taken for granted. It is possible that the currently small faction of trade-skeptical Republican officeholders will grow more substantial in the years to come.

C. THE BENEFITS AND THE PITFALLS OF TRADE PROMOTION AUTHORITY

Simplistic and reductive analyses of U.S. trade politics will sometimes narrow the question down to whether or not Congress has made a grant of trade promotion authority (TPA) to the president. This power, which used to be called the “fast track,” does facilitate the approval of trade agreements. Contrary to a claim that one often hears, however, it does not reduce the role of Congress to a simple yes-or-no choice of enacting or rejecting a trade agreement. Legislators have instead developed numerous ways to exert their authority over trade even after they have delegated some of their constitutional authority over this field to the president, and it is possible that the TPP — like other trade agreements before it — will be subject to significant delays and demands for changes in the terms of the agreement.

The trading system has long depended on the extent to which the U.S. Congress is willing first to delegate some of its constitutional authority over trade policy to the executive branch, and then to approve the agreements that are submitted under the terms of this delegated authority. This point is just as true for the TPP as it was in part rounds of GATT negotiations. It is therefore significant that in June, 2015 Congress narrowly approved a new grant of TPA for President Obama. The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 will last not only through the rest of President Obama’s term, but also more than one year into the term of the next president (i.e., until mid-2018). The law also provides for another three years of authority (i.e., until mid-2021) if the next president asks for this authority and the Congress does not reject his request. The final vote for the bill in the House of Representatives was 218 to 208, and only 28 of the 188 Democrats in the House voted for

the bill. This is one of the narrowest margins by which a grant of negotiating authority has ever been made.

TPA or some other form of special negotiating authority is necessitated by the shortcomings of the established U.S. procedures for the approval of treaties. The Constitution provides in Article I, Section 8, Clause 3 (the Commerce Clause) that trade is a congressional prerogative,¹² and it is a long-established principle of U.S. policymaking that the executive can act effectively in this area only to the degree that the legislature permits it to do so. While it is possible for the president to deal with trade policy as a matter of foreign policy, and to negotiate treaties with his peers, the Senate has a long history of rejecting, or just ignoring, the treaties that presidents submit for its advice and consent. Another problem is that both treaties and the implementing legislation for them are subject to amendment, a power that the Senate is not explicitly granted by the Constitution but that it has nonetheless exercised freely since the early days of the republic. Moreover, opponents have means of ensuring that a treaty and/or its implementing legislation are delayed indefinitely by parliamentary maneuvers. Senate rules offer many dilatory tactics, such as keeping a bill bottled up in a committee and conducting filibusters (i.e., endless debate). This is why most trade agreements that presidents submitted to Congress in the years before the first long-term grant of negotiating authority, which came in 1934,¹³ were defeated.

TPA provides special procedures for expedited ratification of trade agreements by Congress. These provisions in the Trade Act of 1974 (as amended and renewed) call for the transformation of non-tariff agreements into a draft bill known as the “implementing legislation.” The bill specifies the changes that must be made in U.S. trade law in order to meet the obligations set by the agreement. The text is theoretically drafted by the executive branch, but in reality the congressional trade committees are closely involved in the process. Once the president submits the implementing legislation to Congress, together with statements explaining the agreement’s purpose and specifying any additional administrative action needed to implement the agreement, Congress has ninety legislative days in which to approve or reject the bill; legislative days are those days in which Congress is in session. Within this period of time, the committees with jurisdiction over the bill must vote to approve or disapprove it, as must the full House

of Representatives and Senate. The bill itself cannot be amended or blocked from a vote, and a simple majority is required in each chamber for approval.

Despite the almost universal belief that the fast-track rules prevent Congress from tinkering with the results of trade agreements, a closer examination reveals that legislators have often forced substantive changes in trade agreements. The actual use of TPA has evolved in three phases. The first period was 1979 through 1994, bracketed by the first and second uses of fast track to approve multilateral trade agreements (i.e., the Tokyo and Uruguay rounds); between those two years there were also three FTAs approved under fast-track rules. In that period, members of Congress devised several ways to influence the conduct of trade negotiations and the interpretation — or even the revision — of the results. The fight over NAFTA in 1993 offered the most blatant example of legislative changes to an agreement. Not only did the Clinton administration negotiate side agreements with Canada and Mexico, but also engaged in a bargaining process with those countries and with legislators that “bought” the votes necessary to win approval. That was often done by agreeing to side letters with Mexican negotiators that changed the deals reached on sugar, orange juice, and many other products. The tweaks to the results of the Tokyo and Uruguay round negotiations was not nearly as obvious, but there were some adjustments to those agreements at the margins.

The second phase came in the first six years of the G. W. Bush administration (2001-2006), which is the only time that the no-amendment rule has been more or less faithfully followed. With the exception of immigration-related items in the Chilean and Singaporean FTAs, none of the FTAs that the Bush administration submitted during these years were substantively altered in response to demands from Congress. To the extent that Democrats were unhappy with some agreements they usually expressed their displeasure by voting against the agreements, thus leading to narrow and partisan margins of victory rather than to changes in the agreements themselves.

The 2006 congressional elections inaugurated the third period, forcing the Bush administration to take an entirely different approach towards FTAs and the Democrats who now controlled Congress. The agreements approved in the final years of the Bush administration and in the first years of the Obama administration offer the clearest example to date of how legislators can coerce the executive into undoing

the no-amendment rule. The deal that was reached between the Bush administration and congressional Democrats in May, 2007,¹⁴ required extensive renegotiation of the FTAs that were then pending. Under this bargain, the administration pledged that it would not submit the implementing legislation for these pacts until they had been renegotiated to meet Democrats’ demands on labor, environmental, and other issues. This bargain technically did not violate the TPA ban against amendments to the implementing legislation, but in reality it produced the most substantial alteration of trade agreements in U.S. history. The FTA with Peru was approved that same year, after it was renegotiated, but congressional approval of the agreements with Colombia, Korea, and Panama was held up until they were approved under President Obama in 2011. In the end, those agreements were negotiated (or supplemented) three times: once as originally concluded, once by the Bush administration under the terms of the 2007 agreement with Democrats, and once again by the Obama administration in the months prior to final agreement.

What does all of this mean for the TPP? First, there is every reason to expect that legislators will not feel obliged to make only a yes-or-no decision over the agreement, but will instead want to see further changes in the agreement. Some of those proposed revisions may be aimed solely at achieving the adjustments that they request, but it is possible that some legislators will use demands of that sort as a means of providing cover for themselves (i.e., they can portray opposition to the agreement not as protectionism but as dissatisfaction over the negotiators to make some seemingly common-sense change). Second, the mechanism that was once called the fast track is not necessarily fast. While there is a possibility that the debate over TPP approval will be completed within the year, there is ample precedent for the process to be dragged out for months or even years. One can only speculate on how much more complicated it could be to manage such a process when there is not one but eleven other parties to the agreement.

D. THE TPP AND THE U.S. RIVALRY WITH CHINA

Turning from the domestic to the international politics of trade, the TPP should also be considered in light of the Sino-American rivalry. Here we find a great chasm between the perceptions of policymakers and the

public in the different TPP countries. For many U.S. policymakers, the TPP is defined principally by the absence of the largest Pacific partner; for policymakers in many of the other TPP countries, this is simply a very large RTA that will complement the one that they already have in place with China.

These differences in perspective are not confined to diplomats and elected officials, as can be appreciated from the opinion data illustrated in Figure III.1. With one exception, the data show a direct relationship between geographic distance and partner preference. Whereas U.S. neighbors Mexico and Canada have a strong preference for ties to the United States rather than China, the opposite may be observed in Pacific countries Australia and Malaysia. Chile and Peru each represent a middle case, geographically as well as politically, where the publics have clear but not overwhelming preferences for the United States over China. The one exception to this general rule is Vietnam, an immediate neighbor of China that has long had difficult relations with that country.

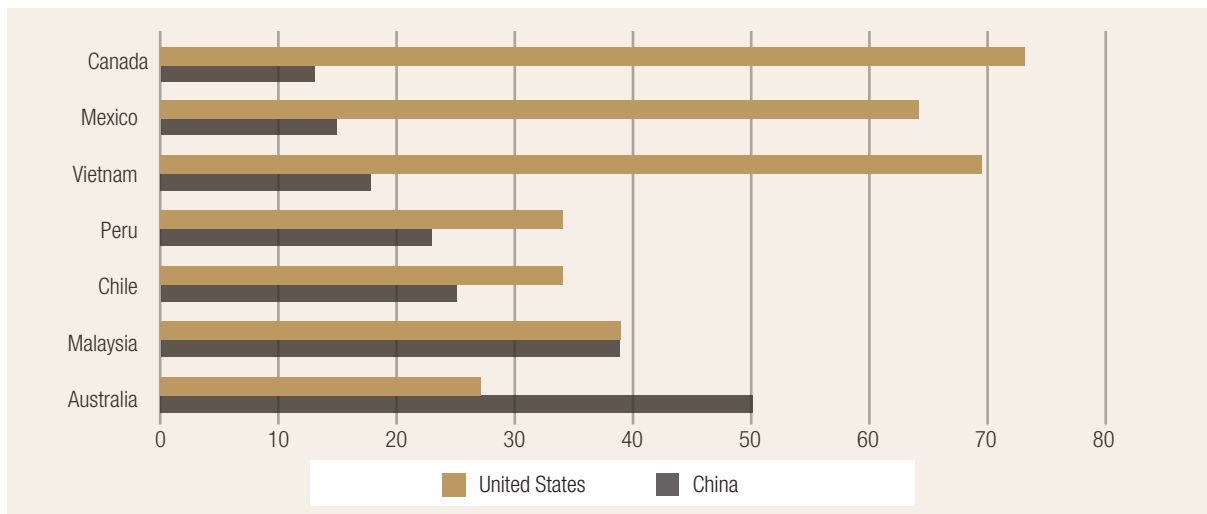
As was stressed in Part I, the Sino-American rivalry is one of the characteristics of the world in which we now live. It would be unrealistic to expect that rivalry not to be reflected in the trading system. That is already apparent in the WTO, where the dynamics are much different now than they were during the GATT period. From an economic perspective, the biggest problem in GATT negotiations came in bridging the differences

between the European Union (in its earlier incarnations) and the United States. That task was facilitated by the congruent perspectives of these partners on trade and much else. Economic and security relations reinforced one another: The GATT and NATO were two very different entities that nevertheless came into being at roughly the same time, and were both led by the same countries. Another reason why the GATT system was more readily managed was that the military and commercial challenges of that time came from different quarters. The security threat to the United States was posed by the Soviet Union, an inefficient and largely autarkic empire that accounted for only a small share of global trade and was almost invisible as a U.S. trading partner, while the principal economic rivalry after the 1960s was with Japan, a close ally that had foresworn the use of military force. By contrast, in the WTO era China is seen as a rival in both economic and security matters.

It could be argued that today the United States has a two-speed trade policy in which the higher gear is reserved for China. The extent to which the Sino-American relationship dominates the instruments of traditional trade policy can be appreciated from the data in Table III.2, which show six different components of policy as well as a composite measure. Taken together, China was the focus of just 5.4% of U.S. trade policymaking activity in the second term of the Clinton administration (1997-2000), but by the first term of

Figure III.1: Public Perceptions of Ties with China and the United States in Selected Countries

Question: "Is it more important for [the country] to have strong economic ties with China or with the United States?"



Source: Pew poll at <http://www.pewglobal.org/files/2015/06/Balance-of-Power-Report-TOPLINE-FOR-RELEASE-June-23-2015.pdf>, Question 26a. Note that the poll did not include Brunei, Japan, New Zealand, or Singapore.

Table III.2: Weight of China in the Instruments of U.S. Trade Policy, 1997-2015

	1997-2000	2001-2004	2005-2008	2009-2012	2013-2015
Antidumping Petitions					
Against China	15	33	31	26	20
All Petitions	164	177	67	55	93
Share against China	9.1%	18.6%	42.3%	47.3%	21.5%
Countervailing Duty Petitions					
Against China	0	0	13	20	23
All Petitions	45	31	18	31	74
Share against China	0.0%	0.0%	72.2%	64.5%	31.1%
US Complaints in the WTO					
Against China	[*]	1	6	8	2
Against All Respondents	45	12	12	12	6
Share against China	0.0%	8.3%	50.0%	66.7%	33.3%
Complaints against the United States in the WTO					
Filed by China	[*]	1	2	5	1
Filed by All Complainants	38	38	17	14	5
Share Filed by China	0.0%	2.6%	11.8%	35.7%	20.0%
Tariffs Collected					
On Imports from China	\$13.5 bn.	\$18.6 bn.	\$36.1 bn.	\$47.4 bn.	\$40.7 bn.
On All Imports	\$74.9 bn.	\$78.9 bn.	\$100.3 bn.	\$105.5 bn.	\$94.9 bn.
Share on Chinese Imports	18.1%	23.6%	36.0%	44.9%	42.9%
Composite Score					
Average of the Six Shares	5.4%	10.6%	42.5%	51.8%	29.8%
Memo:					
China's Share of the U.S. Merchandise Trade Deficit	19.1%	20.5%	27.1%	35.6%	38.4%

[*] = China could neither bring nor be subject to WTO dispute-settlement complaints prior to its accession in 2001.

Note: Shares of AD and CVD petitions calculated on the basis of total countries and products named in petitions. For example, if in a given year there is one AD petition filed against imports of Product X from China and one other country, plus another AD petition filed against imports of Product Y from only one other country, China accounts for 33.3% of all AD petitions.

the Obama administration (2009-2012) its share had grown to 51.8%. China then accounted for close to half of all tariffs that the United States collected on imports, about half of the antidumping and countervailing duty cases in the United States, and two-thirds of the disputes brought by the United States in the WTO. The data also show, somewhat surprisingly, that the focus on China peaked during that first term of the Obama administration, and declined in the first three years of the second term. It will be interesting to see whether this apparent downturn in the focus on China is sustained in the remaining year of President Obama's term, and if it continues into the next administration. The rhetoric now heard in the presidential election

suggests otherwise, with contenders in both parties often addressing the need for the United States to compete more effectively with China.

The data in Figure III.2 suggest that only some U.S. trading partners are as reluctant as the United States to negotiate free trade with China. There are eight Latin American countries that have FTAs with the United States but not China, and that same description goes for Canada and Morocco; it will also hold true for the European Union, if and when the TTIP is concluded. At the other extreme are seventeen economies that have, or are negotiating, RTAs with China but not the United States. These are certainly not mutually exclusive

choices, as is demonstrated by the dozen countries (nine of which are in the TPP) that prefer RTAs with both China and the United States. The data also suggest that the pace with which China is negotiating new agreements is more rapid than that of the United States. This is further implied by the fact that the TTIP is the only trade negotiation in which the United States is currently engaged, but China is engaged in seven RTA negotiations, some of which involve multiple partners (e.g., the Gulf Cooperation Council), and is actively studying possible agreements with Colombia, Fiji, India, and Moldova.¹⁵ This multiplicity of Chinese RTA negotiations, and the overlap with the U.S. partnerships, suggest that the association between trade agreements and strategic conceptions is not

nearly as strong outside of the United States.

The most important consequence of this association between the high politics of strategy and the low politics of trade may be in the implications that it holds for the domestic U.S. politics of trade. The rivalry with China is one of the very few issues in trade policy for which one finds substantial agreement between Democrats and Republicans, with members of both parties seeing China much more as an economic and political rival than as a commercial partner. That could end up being one of the stronger arguments that the supporters of the TPP will cite if and when the actual debate over approval of this agreement begins in Congress.

Figure III.2: RTA Partners of the United States and China



* Agreement with the United States under negotiation (i.e., TTIP) or pending (i.e., TPP).

** Agreement with China under negotiation or pending.

*** Agreements with both the United States and China under negotiation or pending.

Source: <https://ustr.gov/trade-agreements/free-trade-agreements>, fta.mofcom.gov.cn/English/FTA_qianshu.shtml, and <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

ENDNOTES

- ¹ Some versions of theory of the hegemonic stability identify the Netherlands as the first country to play the role of the market-opening hegemon.
 - ² See WT/MIN(15)/W/33/Rev.3) at https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_docs_e.htm.
 - ³ Note that all data on RTAs presented here is based on the WTO's Regional Trade Agreements Information System at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>, which is in turn based on the information that members provide to the secretariat. It does not include any RTAs that may not have been notified (for whatever reason), nor does it include partial scope agreements.
 - ⁴ Note that these eighteen issues do not constitute an exhaustive list of the topics of the TPP. Note also that there is one anomaly in the structure of the TPP, insofar as it does not have a separate chapter on agriculture. The solid circle in the table represents the U.S. and Japanese annexes on agricultural safeguards. The agreement also includes agriculture to the extent that agricultural tariffs are covered by the market-access commitments, and it has a separate chapter on sanitary and phytosanitary measures.
 - ⁵ The Pacific Alliance is a regional integration initiative created in 2011 by Chile, Colombia, Mexico and Peru; Costa Rica and Panama are candidate countries. The group has taken some specific steps towards closer economic integration, including the elimination of tariffs on nearly all non-agricultural trade among them.
 - ⁶ In the case of a congressional session the term "lame duck" is a reference not to the president but to the legislators, some of whom will not be returning in the next Congress due to retirements that are either voluntary (i.e., the incumbent did not seek reelection) or involuntary (i.e., the incumbent lost).
 - ⁷ Note that all presidential elections are also congressional elections. A congressional election that takes place between presidential elections (e.g., in 2014 or 2018) is called a mid-term election.
 - ⁸ Other prominent Republicans, such as Senate Majority Leader Mitch McConnell and Chairman Orrin Hatch of the Senate Finance Committee, express more reservations than Speaker Ryan. Their public comments suggest that they would take a longer and harder look at the agreement. They might be persuaded to handle the agreement in a lame duck session, but they could alternatively insist that the matter be postponed until the new president takes office (especially if the winner is a Republican).
 - ⁹ There are numerous variations on this theme that might be considered, such as the possibility that only some of the original signatories are willing to consider changes, some of them negotiate changes but these are then rejected by their national legislatures. For the sake of simplicity we will avoid exploring all of the many permutations that might follow, as well as the specific types of changes that Congress or a new president might seek in the agreement.
 - ¹⁰ Data reported by CQ Roll Call at <http://media.cq.com/votestudies/>.
 - ¹¹ Note that each Congress lasts two years, such that (as of this writing) we are now in the 114th Congress (2015-2016).
 - ¹² More precisely, the Commerce Clause provides that Congress has power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
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- ¹³ The form of negotiating authority that Congress granted in the mid-1930s through the late 1960s dealt only with tariffs. The TPA discussed here, which dates to 1974, deals with both tariffs and non-tariff matters.
- ¹⁴ The agreement is posted at <http://waysandmeans.house.gov/media/pdf/110/05%2014%2007/05%2014%2007.pdf>.
- ¹⁵ See http://big5.mofcom.gov.cn/gate/big5/fta.mofcom.gov.cn/english/fta_yanjiu.shtml.
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